

***United States Court of Appeals
for the
District of Columbia Circuit***



**TRANSCRIPT OF
RECORD**

756

JOINT APPENDIX

In the
UNITED STATES COURT OF APPEALS
For the District of Columbia Circuit

No. 21,217

SEA-LAND SERVICE, INC.,
Petitioner

v.

FEDERAL MARITIME COMMISSION
and
UNITED STATES OF AMERICA,
Respondents

*PETITION FOR REVIEW OF DECISION OF THE
FEDERAL MARITIME COMMISSION*

United States Court of Appeals
for the District of Columbia Circuit

FILED JAN 17 1968

Nathan J. Paulson
CLERK



TABLE OF CONTENTS

<u>Pleadings</u>	
Order of Investigation	1
First Supplemental Order - Notice of Expansion of Investigation To Include TMT Trailer Ferry, Inc.	3
Second Supplemental Order - Notice of Expansion of Investigation and Change of Name or Proceeding	6
Third Supplemental Order - Notice of Expansion of Investigation and Change of Name of Proceeding	9
Denial in Part of Motion To Dismiss	11
Initial Decision	14
Report by the Commission	45
Petition for Further Hearing	66
Order Denying Petition To Reopen and Reconsider	70
<u>Items in the United States Court of Appeals</u>	
Prehearing Stipulation	75
Order allowing intervention of TMT Trailer Ferry, Inc.	78
Prehearing Order	79
Order denying without prejudice intervenor's motion to dismiss, etc.	79
<u>Evidence</u>	
Testimony of James F. Sharkey	81
Testimony of Robert L. Dausend	88
Testimony of John J. Gabel	97
Testimony of B. E. Thouvenelle	109
Exhibit 1	131
Exhibit 2	134
Exhibit 5	137
Exhibit 11	165
Exhibit 12	171
Exhibit 17	173
Exhibit 18	176

(ii)

Exhibit 19	200
Exhibit 22	201
Exhibit 23	205
Exhibit 27	211
Exhibit 35	212
Exhibit 36	229
Exhibit 37	230



[Served May 8, 1964]

FEDERAL MARITIME COMMISSION

DOCKET NO. 1182

REDUCTION OF RATES FROM JACKSONVILLE,
FLORIDA TO PUERTO RICO

ORDER OF INVESTIGATION

WHEREAS, On March 26, 1964, Sea-Land Service, Inc., Puerto Rican Division, (Sea-Land) filed an amendment to its tariff FMC-F No. 3 (Pan-Atlantic Steamship Corporation FMC-F series), effective May 1, 1964, which reduced the trailerload shipments of "stoves and parts, other than electric with or without electrical attachments" from 55 cents per cubic foot for shipments of any quantity to 50 cents per cubic foot, minimum 1600 cubic feet, when such shipments move through the port of Jacksonville, Florida to ports in Puerto Rico. The 55 cents per cubic foot rate continues to apply as an any quantity rate on shipments moving through the ports of New York and Baltimore and as a less-than-trailerload (LTL) rate on LTL shipments moving through the port of Jacksonville;

WHEREAS, TMT Trailer Ferry, Inc. (C. Gordon Anderson, Trustee) (TMT) protested the reduction on the grounds that it is unfair for Sea-Land to charge a lower rate from Jacksonville to Puerto Rico than it charges from other ports it serves;

WHEREAS, The Commission is of the opinion that the said tariff amendment should be made the subject of a public

investigation and hearing to determine whether the publication by Sea-Land of a lower rate on stoves from Jacksonville to Puerto Rico than it maintains on stoves from other ports to Puerto Rico is unjust, unreasonable, or otherwise unlawful under the Shipping Act, 1916 or the Intercoastal Shipping Act, 1933;

NOW THEREFORE IT IS ORDERED, That an investigation be, and it is hereby, instituted into and concerning the aforementioned reduced rate on stoves with a view to making such findings and orders in the premises as the facts and circumstances shall warrant;

IT IS FURTHER ORDERED, That (I) the investigation herein ordered be assigned for public hearing by the Chief Examiner, before an examiner of the Commission's Office of Hearing Examiners, at a date and place to be announced; (II) Sea-Land Service, Inc., Puerto Rican Division be, and it is hereby made respondent in this proceeding; (III) a copy of this order shall forthwith be served upon said respondent and protestant herein; (IV) the said respondent and protestant be duly notified of the time and place of the hearing herein ordered; and (V) this order and notice of the said hearing be published in the Federal Register.

All persons (including individuals, corporation, associations, firms, partnerships, and public bodies) having an interest in this proceeding and desiring to intervene therein, should notify the Secretary of the Commission promptly and file petitions for leave to intervene in accordance with Rule

JA 3

5(n) [46 CFR 502.73] of the Commission's Rules of Practice and Procedure.

By the Commission, April 30, 1964.

/s/ Thomas Lisi
Secretary

(SEAL)

[Served June 1, 1964]

REDUCTION OF RATES FROM JACKSONVILLE,
FLORIDA TO PUERTO RICO

FIRST SUPPLEMENTAL ORDER

NOTICE OF EXPANSION OF INVESTIGATION
TO INCLUDE TMT TRAILER FERRY, INC.
(C. GORDON ANDERSON, TRUSTEE)

WHEREAS, On March 26, 1964, Sea-Land Service, Inc., Puerto Rican Division, (Sea-Land) filed an amendment to its tariff FMC-F No. 3 (Pan-Atlantic Steamship Corporation FMC-F series), effective May 1, 1964, which reduced the rate for trailerload shipments of "stoves and parts, other than electric with or without electrical attachments" (stoves) from 55 cents per cubic foot for shipments of any quantity to 50 cents per cubic foot, minimum 1600 cubic feet, when such shipments move through the port of Jacksonville, Florida to ports in Puerto Rico. The 55 cents per cubic foot rate continues to apply as an any quantity rate on shipments moving through the ports of New York and Baltimore and as a less-

than-trailerload (LTL) rate on LTL shipments moving through the port of Jacksonville;

WHEREAS, TMT Trailer Ferry, Inc. (C. Gordon Anderson, Trustee) (TMT) protested the reduction on the grounds that it is unfair for Sea-Land to charge a lower rate from Jacksonville to Puerto Rico than it charges from other ports it serves;

WHEREAS, By order dated April 30, 1964, the Commission entered into an investigation to determine whether the publication by Sea-Land of a lower rate on stoves from Jacksonville to Puerto Rico than it maintains on stoves from other ports to Puerto is unjust, unreasonable, or otherwise unlawful under the Shipping Act, 1916, or the Intercoastal Shipping Act, 1933;

WHEREAS, On April 21, 1964, TMT filed an amendment to its tariff FMC-F No. 3 (Trailer Marine Transportation (TMT), Inc., Series) effective May 22, 1964, which reduced its rate on less-than-trailerload shipments of stoves from 52 cents per cubic foot or 124 cents per hundred pounds to 48 cents per cubic foot; and reduced its rate on its trailerload shipments of stoves from 50 cents per cubic foot or 119 cents per hundred pounds, minimum 16,000 pounds, to 45 cents per cubic foot subject to a minimum of 1600 cubic feet when the shipment is tendered in a standard trailer and a minimum of 1800 cubic feet when the shipment is tendered in a high cube van;

WHEREAS, Sea-Land protested the TMT tariff changes on the grounds that said changes were published by TMT to reinstate as unlawful, self-imposed and self-serving differential which would precipitate a rate war;

WHEREAS, The Commission is of the opinion that the new TMT tariff provisions should be made the subject of a public investigation to the same extent as other matter affecting the transportation of stoves currently under investigation herein, to determine whether they are unjust, unreasonable, or otherwise unlawful, under the Shipping Act, 1916, or the Intercoastal Shipping Act, 1933;

NOW THEREFORE IT IS ORDERED, That this proceeding be, and it is hereby expanded to include, in addition to matters now under investigation herein, an investigation into and a hearing concerning the lawfulness of TMT's reduced rates on stoves, effective on May 22, 1964, and the issue of whether TMT is entitled to maintain a differential below the rate of Sea-Land because of TMT's slower barge service and any cost differences which may be inherent in TMT's barge operation, with a view to making such findings and orders in the premises as the facts and circumstances shall warrant;

IT IS FURTHER ORDERED, That TMT, Trailer Ferry, Inc. (C. Gordon Anderson, Trustee) be and it is hereby made respondent in this proceeding;

IT IS FURTHER ORDERED, That (I) a copy of this order shall forthwith be served upon the respondents, and protestants herein; (II) the said respondents, and protestants be duly

notified of the time and place of the hearing ordered; and (III) this order and notice of the said hearing be published in the Federal Register.

All persons (including individuals, corporations, associations, firms, partnerships, and public bodies) having an interest in this proceeding and desiring to intervene therein, should notify the Secretary of the Commission promptly and file petitions for leave to intervene in accordance with Rule 5(n) [46 CFR § 502.73].

By the Commission May 21, 1964.

/s/ Thomas Lisi
Secretary

(SEAL)

[Served June 16, 1964]

RATES FROM JACKSONVILLE,
FLORIDA TO PUERTO RICO
SECOND SUPPLEMENTAL ORDER
NOTICE OF EXPANSION OF INVESTIGATION AND CHANGE OF NAME
OR PROCEEDING

WHEREAS, By order dated April 30, 1964, the Commission entered into an investigation to determine whether the publication by Sea-Land Service, Inc., Puerto Rican Division (Sea-Land) of a different rate on a commodity from Jacksonville to Puerto Rico than it maintains on the same commodity

from other Atlantic ports to Puerto Rico is unjust, unreasonable, or otherwise unlawful under the Shipping Act, 1916, or the Intercoastal Shipping Act, 1933;

WHEREAS, On April 20, 1964, Sea-Land filed 5th Revised Page No. 122-A, 2nd Revised Page No. 123, 3rd Revised Page No. 124 to its Tariff FMC-F No. 3 (Pan-Atlantic Steamship Corporation Series) originally scheduled to become effective on May 21, 1964, but postponed to and including June 7, 1964, which would increase the refrigerated cargo rates on Fruits and Vegetables. Fresh from \$525.00 per trailerload of onions and potatoes; \$550.00 per trailerload of cabbage and tomatoes; and \$575.00 per trailerload of watermelons to \$650.00 per trailer in straight or mixed trailerloads when such cargo moves from Jacksonville to ports in Puerto Rico;

WHEREAS, The trailerload rates on these commodities from other Atlantic ports remain unchanged and said tariff pages filed April 20, 1964 result in higher rates being assessed on Jacksonville/Puerto Rico cargo than on cargo moving from other Atlantic ports even though all of the cargo moves on the same voyage;

WHEREAS, The Commission is of the opinion that said new Sea-Land tariff provisions should be made the subject of a public investigation to the same extent as other matter currently under investigation herein, to determine whether they are unjust, unreasonable, or otherwise unlawful, under the Shipping Act, 1916, or the Intercoastal Shipping Act, 1933;

NOW THEREFORE IT IS ORDERED, That this proceeding be, and it is hereby expanded to include, in addition to matters now under investigation herein, an investigation into and a hearing concerning the lawfulness of Sea-Land's refrigerated trailer rates, effective on June 8, 1964, and as later may be amended, with a view to making such findings and orders in the premises as the facts and circumstances shall warrant;

IT IS FURTHER ORDERED, That (I) a copy of this order shall forthwith be served upon the respondents herein; (II) the said respondents be duly notified of the time and place of the hearing ordered; and (III) this order and notice of the said hearing be published in the Federal Register.

All persons, (including individuals, corporations, associations, firms, partnerships, and public bodies) having an interest in this proceeding and desiring to intervene therein, should notify the Secretary of the Commission promptly and file petitions for leave to intervene in accordance with Rule 5(n) [46 CFR § 502.73].

By the Commission June 4, 1964.

/s/ Thomas Lisi
Secretary

[Seal]

[Served September 30, 1964]

JACKSONVILLE, FLORIDA/
PUERTO RICO RATES

THIRD SUPPLEMENTAL ORDER
NOTICE OF EXPANSION OF INVESTIGATION
AND CHANGE OF NAME OF PROCEEDING

WHEREAS, By order dated April 30, 1964, the Commission entered into an investigation to determine whether the publication by Sea-Land Service, Inc., Puerto Rican Division (Sea-Land) of a different rate on a commodity from Jacksonville to Puerto Rico than it maintains on the same commodity from other Atlantic ports to Puerto Rico is unjust, unreasonable, or otherwise unlawful under the Shipping Act, 1916, or the Intercoastal Shipping Act, 1933;

WHEREAS, By First Supplemental Order in this proceeding dated May 21, 1964 the Commission expanded the investigation in this proceeding to include the issue of whether TMT Trailer Ferry, Inc. (C. Gordon Anderson, Trustee) (TMT) is entitled to maintain a differential below the rate of Sea-Land because of TMT's slower barge service and any cost differential which may be inherent in TMT's barge operation;

WHEREAS, On August 6, 1964, Sea-Land filed 16th Revised Page No. 31, 16th Revised Page No. 32 and 25th Revised Page No. 33 to its Tariff FMC-F No. 2 (Pan-Atlantic Steamship Corporation Series) to become effective on September 10, 1964, (25th Revised Page 33 was postponed to and

including September 17, 1964) which amended rates on used and scrap metals (scrap metal).

WHEREAS, The scrap metal rates from Puerto Rico to other Atlantic ports remain unchanged and said tariff pages filed August 6, 1964 result in different rates being assessed on Puerto Rico/Jacksonville cargo than on cargo moving to other Atlantic ports even though all of the cargo may move on the same vessel under the provisions of the tariff;

WHEREAS, TMT protested the Sea-Land tariff changes on grounds similar to those which caused the Commission to institute this investigation in the first instance;

WHEREAS, The Commission is of the opinion that said new Sea-Land tariff provisions should be included in the investigation to determine whether they are unjust, unreasonable, or otherwise unlawful, under the Shipping Act, 1916, or the Intercoastal Shipping Act, 1933;

NOW THEREFORE IT IS ORDERED, That this proceeding be, and it is hereby expanded to include an investigation into and a hearing concerning the lawfulness of Sea-Land's scrap or used metal rates, effective September 10, and 18, 1964, and as later may be amended, with a view to making such findings and orders in the premises as the facts and circumstances shall warrant;

IT IS FURTHER ORDERED, That (I) a copy of this order shall forthwith be served upon the respondents herein; (II) the said respondents be duly notified of the time and place of the of the hearing ordered; and (III) this order and notice of the said hearing be published in the Federal Register.

All persons (including individuals, corporations, associations, firms, partnerships, and public bodies) having an interest in this proceeding and desiring to intervene therein, should notify the Secretary of the Commission promptly and file petitions for leave to intervene in accordance with Rule 5(n) [46 CFR § 502.73].

By the Commission.

/s/ Thomas Lisi
Secretary

(SEAL)

[Served October 16, 1964]

DENIAL IN PART OF MOTION TO DISMISS

The Commission, by order dated April 30, 1964, and several supplemental orders, entered into an investigation to determine the lawfulness of certain rates, the lawfulness of the publication of different rates on certain commodities between Jacksonville, Florida and Puerto Rico from rates on the same commodities between other Atlantic Ports and Puerto Rico, and the lawfulness of a differential with respect to the rates of TMT Trailer Ferry, Inc. (C. Gordon Anderson, Trustee) (TMT) below those of Sea-Land Service, Inc., Puerto Rican Division (Sea-Land).

On September 8, 1964 TMT moved to dismiss the proceeding as the rates then under investigation had been cancel-

led. Sea-Land replied, conditionally concurring in the motion.

On September 17, 1964, however, the Commission issued a Third Supplemental Order expanding this proceeding to cover amended rates on used and scrap metals filed by Sea-Land on August 6, 1964, in 16th Revised Page No. 31, 16th Revised Page No. 32 and 25th Revised Page No. 33 to its Tariff FMC-F No. 2 (Pan-Atlantic Steamship Corporation Series) to become effective on September 10, 1964, (25th Revised Page No. 33 postponed to and including September 17, 1964).

THEREFORE, IT IS ORDERED, That this proceeding be kept open with respect to the above mentioned used and scrap metal rates, effective September 10 and 18, 1964, and the questions of the lawfulness of the difference in rates on the same commodities between Jacksonville, Florida and Puerto Rico and other Atlantic Ports and Puerto Rico, and of the differential with respect to the rates of TMT below those of Sea-Land; and

IT IS FURTHER ORDERED, That with respect to the reduced rates of Sea-Land in its Tariff FMC-F No. 3 (Pan-Atlantic Steamship Corporation Series) on stoves and parts in trailerload shipments of 50 cents per cubic foot, minimum 1600 cubic feet, filed with the Commission on March 26, 1964, and cancelled effective July 7, 1964, the reduced rates of TMT in its Tariff FMC-F No. 3 (Trailer Marine Transportation (TMT), Inc. Series) on less-than-trailerload shipments of stoves of 48 cents per cubic foot and 45 cents per

JA 13

cubic foot on trailerload shipments, minimum 1600 cubic feet, in a standard van, and 1800 cubic feet in a high-cube van, filed with the Commission on April 21, 1964, and cancelled effective July 15, 1964, and the increased rates of Sea-Land on refrigerated cargo of \$650.00 per trailer in its above cited tariff, filed April 20, 1964, and cancelled effective August 5, 1964, this proceeding be, and it hereby is, dismissed.

By the Commission.

/s/ Thomas Lisi
Secretary

(SEAL)

[Served August 16, 1966]

Rate of Sea-Land Service, Inc., Puerto Rican Division, on scrap or used metal from Puerto Rico to Jacksonville found lawful.

TMT Trailer Ferry, Inc. is entitled to a differential below the rates of Sea-Land in the trade between Jacksonville, Florida and Puerto Rico to prevent its destruction as a competitor and substantial exclusive control of the trade by Sea-Land.

Sea-Land may not charge different rates between the various United States Atlantic ports it serves and Puerto Rico in the absence of cost differences, difference in the value of services, or other transportation conditions justifying different rates.

Homer S. Carpenter and Edward T. Cornell for respondent TMT Trailer Ferry, Inc. (C. Gordon Anderson, Trustee).

Warren Price, Jr. and Hugh H. Shull, Jr. for respondent Sea-Land Service, Inc.

James M. Henderson for intervener Port of New York Authority.

John Rigby for intervener Commonwealth of Puerto Rico.

Donald J. Brunner and Thomas Christensen as Hearing Counsel.

INITIAL DECISION BY HERBERT K. GREER,
PRESIDING EXAMINER ¹/₁

The general purpose of this proceeding is to examine the competitive relationship between Sea-Land Service, Inc., Puerto Rican Division (Sea-Land) and TMT Trailer Ferry, Inc. (C. Gordon Anderson, Trustee) (TMT). The Order of Investigation, as amended, presents three specific issues for determination: (1) the lawfulness of Sea-Land's rate on scrap or used metal, northbound from Puerto Rico, (2) whether Sea-Land may lawfully maintain a different rate from Jacksonville to Puerto Rico than it maintains from other Atlantic ports to Puerto Rico, and (3) whether TMT is entitled to maintain a differential below the rates of Sea-Land because of TMT's slower barge service and any cost differential which may be inherent in TMT's barge operation.

¹This decision will become the decision of the Commission in the absence of exceptions thereto or review thereof by the Commission. (Rule 13(g), Rules of Practice and Procedure, 46 CFR 502.227).

The Commonwealth of Puerto Rico and Port of New York Authority intervened.

FINDINGS OF FACT

1. TMT commenced operation in the Florida-Puerto Rico trade in 1954 and provided the original roll-on/roll-off trailer service in the trade. TMT offers a tug and barge service, the barges being converted LSTs which have been modified to permit the movement of highway trailers on their own wheels between the dock and the deck of the vessel. The tugs operated in the service are chartered and owned by the Florida Towing Company, a creditor of TMT. TMT is subject to the supervision of a Federal Court in a bankruptcy proceeding.

2. TMT serves only the port of San Juan in Puerto Rico offering two sailings each week from Jacksonville, alternate voyages including a stop at Miami, Florida. Because of the nature of the tug and barge operation, TMT experiences difficulty in keeping on schedule, there being variations of from one to three days. Transit time for direct sailings to San Juan from Jacksonville is approximately seven days and from Jacksonville via Miami to San Juan approximately nine days.

3. Sea-Land began its service between Jacksonville and Puerto Rico in 1959 by moving cargo from Jacksonville to Port Newark, New Jersey and transshipping at that point to vessels moving to Puerto Rico. In April, 1963, a direct weekly service between Jacksonville and Puerto Rico was es-

tablished and except for a temporary reversion to the indirect service due to vessel damage, Sea-Land has continued its direct operation.

4. Sea-Land also operates out of the North Atlantic ports of Elizabeth, New Jersey and Baltimore, Maryland and recently began operating out of the South Atlantic port of Charleston, South Carolina. It serves, in addition to San Juan, the Puerto Rican ports of Ponce, Arecibo, and Mayaguez and operates terminals at each Puerto Rican port as well as at Jacksonville. Transit time between Jacksonville and San Juan is three days and between Jacksonville and Ponce or Mayaguez, from four to five days. Containerships are used in the trade, the C-2 type vessel southbound and Jumbos and C-3 types northbound. All are loaded by crane. Not all of Sea-Land's vessels return to North Atlantic ports via Jacksonville.

5. Upon entering the Jacksonville-Puerto Rico trade, Sea-Land filed rates based on the existing rates of other carriers. TMT thereupon filed lower rates which motivated Sea-Land to reduce its rates. Sea-Land has not fully met the most recent TMT reduction.

6. On the eleven major-moving commodities via TMT's southbound service, its truckload rates are lower than Sea-Land's corresponding rates with the exception of the rate on tin plate (TMT Code 583 - Iron and Steel, manufactured). For the year 1964, approximately 20% of TMT's revenue from major-moving commodities came from cargo originating in

areas rail-rate-favorable to North Atlantic ports; 37% from origins rail-rate-equal to North Atlantic ports and Jacksonville; 32% from origins rail-rate-favorable to Jacksonville; the balance of cargo originating in areas rate favorable to Miami or from other sources.

7. The preponderance of Sea-Land cargo moving through Jacksonville originates in areas rail-rate-favorable to Jacksonville. The Sea-Land major-moving commodities through Jacksonville are paper and paper products, animal feed, food products, beer, sand and clay, iron and steel products, piece goods and refrigerator cargo of poultry, eggs, ice cream, fish, produce and frozen foods. Not all of TMT's rates on these commodities appear on the record; however, as to certain commodities the TMT rates are either equal to or higher than Sea-Land rates. TMT derives insubstantial earnings from these latter commodities. Sea-Land rates on bottles and paper products southbound are lower than the TMT rates on such commodities.

8. Sea-Land carries furniture out of Jacksonville from origins rail-rate-favorable to North Atlantic ports.

9. The rates of Sea-Land from Elizabeth to Puerto Rico and from Jacksonville to Puerto Rico are on parity, with the principal exceptions of stoves and ranges southbound and rum, cocoanuts, and pineapples northbound, the latter rates being lower to Jacksonville than to Elizabeth. The northbound rates were reduced to meet TMT competition.

10. The predominant factor influencing shippers in se-

lecting a carrier or a port is the total cost from origin to destination. To a lesser extent, shippers are influenced by the time in transit, the adherence to a published schedule, the hazard involved in the service offered, the probable condition of the shipment on arrival at destination, a carrier's sales organization, and an established relationship between the shipper and carrier.

11. Because of TMT's lower rates, Sea-Land has been unable to participate in the carriage of certain commodities, shippers selecting TMT and the port of Jacksonville because of lower over-all transportation costs.^{2/}

12. In establishing rates, TMT's principal consideration is the necessity to maintain a differential under competitive rates for the reason that in management's opinion, it could not remain in business without a differential due to its inferior service as compared to the service offered by competitors operating self-propelled vessels.

13. Sea-Land maintains an extensive sales organization consisting of several hundred individuals (not restricted to

²Sea-Land's evidence relating to letters solicited by their salesmen which stated that Sea-Land could not obtain cargo from certain shippers because of TMT's lower rates was excluded, not on the ground that it was hearsay as stated in Sea-Land's brief, but because it was cumulative. Had these letters been in evidence, they would have shown Sea-Land could obtain cargo handled by TMT if rates were equal. The exhibits are appended to the record as an offer of proof.

the Puerto Rican trade) with offices in twelve major shipping areas. TMT has a sales force of six.

14. The trade between the United States and Puerto Rico has grown rapidly from 1952 to 1964. Both Sea-Land and TMT have increased their tonnage during this period and have expanded their services.

15. Sea-Land, upon entering the Jacksonville-Puerto Rico trade, developed new cargo and also obtained cargo formerly handled by other carriers.

16. Sea-Land has become the dominant carrier in the trade. TMT handles approximately 5% of the trade.

17. Sea-Land established its present rate on scrap or used metal for the purpose of meeting TMT competition northbound. The rates of respondents are identical except that TMT absorbs insurance costs. As the southbound traffic substantially exceed the northbound traffic, revenue derived by Sea-Land on the carriage of scrap and used metal serves to defray a portion of round voyage expenses. TMT does not carry scrap or used metal northbound.

18. On all voyages, Sea-Land carries a full complement of trailers, empty and loaded.

19. The cost data submitted by respondents is of such a nature that it cannot be determined on the record which respondent is the low cost operator. Both are operating at a profit in the Jacksonville-Puerto Rico trade.

20. At rate parity with Sea-Land, TMT would lose all cargo from origins rate favorable to North Atlantic ports,

approximately 20% of its major moving commodities based on 1964 data, and would lose substantial amounts of cargo it has handled from origins rate equal to Jacksonville and other ports served by Sea-Land. At rate parity, TMT's ability to compete would be seriously crippled.

21. Sea-Land has declared its intent, unless prevented from doing so by the Commission, to lower its rates out of Jacksonville to TMT level; and TMT has declared its intent to lower its rates in such case to maintain a differential.

22. Elimination of TMT from the Jacksonville-Puerto Rico trade would leave Sea-Land in virtual control of that trade.

DISCUSSION

Sea-Land's Rate on Used or Scrap Metal.

Sea-Land charges a lower rate on this commodity from Puerto Rico to Jacksonville than it charges from Puerto Rico to North Atlantic ports. It takes the position that this rate difference is based entirely on competitive necessity, that is, to meet the lower rates of TMT from Puerto Rico to Jacksonville. Sea-Land sees this competitive necessity as a "transportation condition" warranting the rate difference. TMT does not address argument to this issue except insofar as it contends generally that Sea-Land has not shown the competitive necessity for rate parity. Hearing Counsel takes the position that although the rate from Puerto Rico to Jacksonville is less than the rate on the same commodity from Puerto

Rico to North Atlantic ports, it should be permitted to stand simply because the record contains no evidence to support a contrary conclusion.

A rate difference between one point of origin and different points of destination is not per se unlawful. The question of competitive necessity as a transportation condition warranting a differential relates to the more general issues of this investigation and is later herein discussed. The Sea-Land rate on used or scrap metal was not suspended and this carrier did not have a burden of proving it lawful. In accordance with Hearing Counsel's position, in the absence of evidence upon which to base a finding that the rate is unlawful, it is found to be lawful. It is noted that this issue concerns a specific rate while other issues involve rate structures.

Sea-Land Rate Differential Between North Atlantic Ports and Jacksonville.

With some exceptions, Sea-Land maintains equal rates from North Atlantic ports to Puerto Rican ports and from Jacksonville to ports in Puerto Rico. It contends, however, that a transportation condition warranting a change in this rate structure is the necessity of meeting TMT competition out of Jacksonville and proposes that if the Commission does not order TMT to raise its rates to the Sea-Land level, Sea-Land has the right to lower its rates out of Jacksonville to TMT level while permitting the higher rates out of North Atlantic ports to stand. Sea-Land does not rely on a difference in distance between North Atlantic ports to Puerto Rico

than from Jacksonville. It does not rely on any cost differences in regard to this particular issue and did not furnish cost data in relation to carriage from North Atlantic ports to Jacksonville or on the total voyage from North Atlantic ports to Puerto Rico.

It is TMT's position that Sea-Land has not demonstrated the cost capacity to reduce its rates out of Jacksonville and that the Commission may not lawfully permit such a reduction without a concurrent reduction in Sea-Land rates out of North Atlantic ports. In particular, it argues that Sea-Land must show that the competition out of Jacksonville is such as to compel a reduction and moreover, that such a reduction cannot be made without causing undue preference of Jacksonville and undue prejudice to the North Atlantic ports also served by Sea-Land.

Hearing Counsel points out that Sea-Land's avowed purpose in seeking approval of different rates between North Atlantic ports and Jacksonville to Puerto Rico is to meet TMT competition; that although the record shows that TMT has attracted cargo from origins favoring Sea-Land movement via its North Atlantic service, TMT has not thereby denied Sea-Land substantial revenue as evidenced by the fact that Sea-Land has competed successfully from areas of origin inland-rate-equal as between North Atlantic ports and Jacksonville and conducts a profitable operation out of Jacksonville.

Hearing Counsel concludes that the probable result of permitting Sea-Land to maintain lower rates for its Jackson-

ville service than for its North Atlantic service would have two results: (1) seriously impairing TMT's ability to attract cargo, and (2) inducing the movement of cargo from Sea-Land's service at North Atlantic ports to its service at Jacksonville.

Port of New York Authority agrees with Sea-Land that rate parity from all Atlantic ports to Puerto Rico should be established; however, it does not agree that Sea-Land is entitled to lower its existing rates in order to meet TMT rates from Jacksonville to Puerto Rico because such an action would result in undue discrimination against North Atlantic ports.

The Commission has recently ruled on the matter of port differentials. In Reduced Rates on Machinery and Tractors from United States Atlantic Ports to Ports in Puerto Rico, FMC Dockets 1187 & 1187 (Sub. 1), May 10, 1966, it was held:

It is true that in this case "all other factors" are not "substantially equal" as the South Atlantic ports are closer to Puerto Rico than the North Atlantic ports, and it is black letter transportation law that a carrier should be able to utilize its "natural advantage" of a closer location to port of discharge to charge lower rates than more distantly situated carriers.

Although Sea-Land does not so contend, this establishes that distance may warrant a rate difference between different ports of origin and the same port of discharge. However, the amount of the difference is to be determined as follows:

The degree by which such rates may be lower than those from more distant localities is not open to speculation, however. As was stated by the Supreme Court in United States v. Illinois Cent. R.R., 263 U.S. 515, 524 (1924) the mere fact that a "rate is inherently reasonable, and that the rate from competing points is not shown to be unreasonably low, does not establish that the discrimination is just. Both rates may lie within the zone of reasonableness and yet result in undue prejudice." The difference must be "justified by the cost of the respective services, by their values, or by other transportation conditions."

Had Sea-Land adduced evidence of the difference in cost of operation between North Atlantic ports and Puerto Rico as compared to cost of operation between Jacksonville and Puerto Rico, it might have been determined that a rate difference was justified on the basis of "costs of the respective services." However, the only issue of fact presented for determination is whether a rate difference between ports is justified by competitive necessity.

Competitive necessity is not determined on the ability to deprive a competitor of cargo. It should be approached from the standpoint that a carrier, under the facts adduced, finds itself unable to compete. On this record, it is evident that Sea-Land is a strong competitor vis-a-vis TMT. The Puerto Rican trade has substantially increased during the period Sea-Land has competed with TMT out of Jacksonville and Sea-Land has obtained its full share of that increase. If the testimony of Sea-Land's cost expert is accepted, the opera-

tion is profitable. Sea-Land serves ports other than Jacksonville and carries out of those ports cargo for which TMT competes. TMT's lower rates have prevented Sea-Land from obtaining cargo from certain shippers now shipping via TMT but it is also established that Sea-Land does obtain cargo from inland-rate-equal origins regardless of rate differences.

It is concluded that on this record, there is no evidence to support a finding of competitive necessity or other transportation conditions to justify a Sea-Land rate difference between the various United States Atlantic ports it serves and Puerto Rico.

Entitlement of TMT to a Differential
Based on Service Disability.

A specific question presented is whether TMT is entitled to a differential below the rates of Sea-Land because of its slower transit time. TMT considers this issue as involving a service disability which, in view of Sea-Land's superior service, would force it out of business unless permitted to maintain lower rates. Sea-Land contends that the slower transit time is not a competitive disadvantage because of TMT's greater sailing frequency. Hearing Counsel takes the position that while TMT has not demonstrated that slower transit time prevents it from attracting cargo, at rate parity TMT's overall ability to attract cargo would be crippled.

Shippers did not appear to testify regarding their position in selecting a carrier because of a faster transit

time. However, a TMT witness testified that in his experience, this factor had an effect on shipper selection of a carrier. Whether slower transit time is a disability which entitles TMT to a differential is viewed from the standpoint of ability to attract cargo at rate parity with Sea-Land. It is established that primary shipper consideration in selecting a carrier is total cost of transporting a commodity from origin to destination, but at rate parity this consideration would not control and considerations which are of minor importance in the presence of a price difference would assume a major role. One result of slower transit time is that TMT vessels are exposed to the hazards of ocean transportation for approximately twice the time experienced by Sea-Land vessels. Hazard and the probable condition of the commodity upon arrival at destination is a shipper concern. This fact is shown by the testimony regarding Sea-Land's competition with the railroads from North Atlantic port areas to Jacksonville and that shippers prefer the less hazardous rail transportation to ocean shipping when costs are equal. Rail and ocean transportation are two different modes of transportation but a tug and barge is also a different mode of transportation from a self-propelled vessel. A tug and barge service is inherently less stable and less reliable. Sea-Land refers to its service as modern and efficient. By no stretch of the imagination could the TMT vessels be called modern, or in view of the inability to adhere to a schedule, efficient. It would be unrealistic to find that shippers would not prefer

the more modern, faster and more dependable service of Sea-Land if rates were equal. This conclusion gains support from the testimony relating to the impact of rate parity on TMT's competition with a self-propelled carrier out of another port. Moreover, the superior Sea-Land sales force would become an important competitive advantage at rate parity.

TMT's ability to compete in the Puerto Rican trade is primarily due to its lower rates. At rate parity its competitive ability would be so severely crippled that its survival would be improbable. It is concluded that slower transit time constitutes a service disability and a competitive disadvantage.

Cost as Determinative of a TMT
Entitlement to a Differential.

In Reduced Rates on Automobiles - Atlantic Coast Ports to Puerto Rico, Report on Remand, FMC Docket 1176, November 16, 1965, the Commission determined that it was without authority to fix minimum rates and thus establish a differential, on the sole ground of service disability. While this proceeding concerns entitlement to a differential, the issues are so closely related that the above cited decision is deemed applicable to both questions. However, service disability coupled with other transportation conditions may constitute a basis for entitlement to a differential. Lower cost is a transportation condition to be considered.

A specific question presented is TMT's entitlement to a differential because of "any cost difference which may be in-

herent in TMT's barge operation." A tug and barge operation has inherent characteristics which should result in lower costs of operation in comparison to self-propelled vessels. It is a roll-on/roll-off operation which permits the driving of trailers to and from dock to deck, a less costly operation than the crane loading and unloading system employed by Sea-Land. Motive power is provided by tugs, less costly to operate than the larger self-propelled vessels. TMT barges, converted LSTs, are not manned, personnel being limited to the tugs and the cost included in charter hire. TMT's capital investment cannot be compared to Sea-Land's investment, the latter necessarily being far greater. TMT is a bankrupt organization and not subject to the tax burden borne by Sea-Land. TMT uses non-union labor at Jacksonville while Sea-Land employs union labor.

Nevertheless, Sea-Land has presented evidence designed to refute the contention that inherent characteristics in TMT's tug and barge operation result in lower costs. A special study by a cost expert was presented together with the expert's recomputation of TMT costs. The study and the recomputation purpose to prove that Sea-Land's cost of moving 30,000 pounds of cargo was 103.0¢ per cwt compared to a TMT cost of 193.2¢ per cwt. Considering the comparative characteristics of the two modes of transportation, a TMT cost of almost twice the Sea-Land cost would at the very least, be a remarkable conclusion even though a Sea-Land vessel has greater cargo capacity.

The Sea-Land study purports to show the average cost of handling truckload traffic from Jacksonville to points in Puerto Rico and is based on computations relating to the operation of all vessels which sailed from Jacksonville to Puerto Rico during the last six months of 1965. Voyages considered include 13 by a C-3 type vessel, 3 of which called at Ponce, 5 at Mayaguez, all in addition to stops at San Juan; and 13 voyages of C-2 vessels, 4 calling at Mayaguez and 1 at Ponce in addition to stops at San Juan. "In port" and "at sea" costs are separately computed. Overhead is computed, as hereinafter discussed in more detail, by separating parent company overhead into segments assigned to various subsidiaries. Charter hire and depreciation were "normalized".

TMT produced its own cost expert to develop inconsistencies in the Sea-Land study and recomputation of TMT costs. Sea-Land did not produce a profit and loss statement as did TMT. A Schedule 3002^{3/} covering the last six months of 1965 for all three types of vessels used by Sea-Land with statistics for miles and days at sea and in port was not furnished. Sea-Land did not identify and show the itinerary of

³ A Schedule 3002 is a vessel operating statement filed by carriers with the Commission and shows profit or loss from vessel operation. The form submitted by TMT was expanded to include all costs incident to its service for the first three months of 1965, and profit realized during that period.

each vessel voyage which called at Puerto Rico and either picked up or off-loaded either empty or laden boxes originating in or destined to Jacksonville, Baltimore, or Elizabeth nor did it furnish data for Elizabeth and Baltimore from which to develop the box cost aboard ship, the billings and collecting costs, box and chassis expenses, interline and platform expense as it had done for its Jacksonville operation. Further error is alleged by TMT in that Sea-Land, even with respect to the Puerto Rico-Jacksonville movement, did not embrace all the services involved, such as the operation of its Jumbo (T-3) vessel, thus ignoring a portion of the expense relating to the transportation of empty boxes; that "time at sea" cost was pro-rated on a loaded box-mile basis which assumed the same relationship of empty to loaded box miles for each part of the operation involved although the substantial imbalance in the northbound-southbound trade required a different method of computation. Additionally, TMT alleges that Sea-Land's statement of "in port" and terminal expenses were distributed on a loaded box basis which assumed the same ratio of loaded to empty boxes; that the gross unit cost of 24.7¢ per cwt was computed as applicable to the total weight of all types of traffic, not fairly applicable to the type of traffic handled by Sea-Land between Jacksonville and Puerto Rico. Finally, TMT attacks the general overhead expense computation which was based on a ratio of 15%, adjusted to 17%, and had the effect of reducing actual expenses by \$7,123,173 by "normalizing" charter expenses

to an ownership basis, a Sea-Land method the Interstate Commerce Commission has consistently refused to accept (citing All Freight, TOFC - Between East and Chicago-East St. Louis, 325 I.C.C. 591, 598 (1965)).

Hearing Counsel does not consider the cost data presented by respondents as comparable, the Sea-Land study showing the cost incurred in transporting a 30,000 pound box from Jacksonville to Puerto Rico while the TMT cost study shows the cost incurred in transporting a measurement ton between those ports. The Sea-Land recomputation of TMT costs is not deemed factual as it was not founded on TMT actual experience.

Cost finding is not an exact science but results obtained should represent a reasonably close approximation of assignable costs. Increased Rates on Sugar, 7 F.M.C. 404 (1962). The Sea-Land studies do not meet the test. The work sheet adduced to back up the study show that before allocating overhead, \$5,752,049 of the overhead total was eliminated and overhead allocated at the rate of 16.9% in lieu thereof. This percentage was then used as a basis for computing the average cost of moving a 30,000 pound container. The somewhat confusing treatment of the ratio between empty and loaded containers, raises some doubt as to the factual basis of 30,000 pounds per loaded container. The computations are based on weight tons instead of revenue tons, a method not accepted by the Commission in its General Order No. 11. Costs were based on the use of C-2 and C-3 type vessel

without consideration of the operation of Jumbos (T-3s). The round voyage computations are less than convincing as all Sea-Land vessels do not make a round voyage between Jacksonville and Puerto Rico, some returning to North Atlantic ports by another route, thus actual experience is not fairly expressed. Out of the 26 vessels described in the study, only 10 carried cargo to Jacksonville on the return trip. This is a total of 36 "legs" on which cargo was carried between Jacksonville and Puerto Rico. An examination of the study presented and other data submitted by Sea-Land, would indicate discrepancies relating to approximately 37% of these "legs". Segregating the Sea-Land Jacksonville-Puerto Rico operation for the total Puerto Rican operation overlooks overlapping costs, particularly in regard to empty boxes carried. The box-mile basis is open to question because data is "factored" and because of discrepancies in the number of loaded boxes used in the box mile computations. Sea-Land's expert testified that a profit and loss statement could not be prepared without a study lasting several months because of the complexity of parent company bookkeeping. But he did testify that the Jacksonville-Puerto Rican trade was profitable. The study would have had greater impact had profit or loss been demonstrated by comparison of total revenue to fully distributed costs. Sea-Land's recomputation of TMT's costs is not based on actual TMT experience and is far from persuasive. There are many features of the Sea-Land cost study which are so incomprehensible because of

averaging, assumptions, and inconsistencies that it cannot be considered as a basis for a finding that Sea-Land is the low cost operator. If the purpose of the studies was to befog the question of comparative costs and prevent a determination of actual comparative costs, they accomplished that purpose.

TMT's computations, while capable of a determination of costs, are not free from criticism. During the period reflected in the schedule 3002, TMT had a greater volume of business than normal because of a strike which affected competitors.

This record will not support the conclusion that TMT is entitled to a differential as the low cost carrier. Although reason would indicate that the inherent characteristics of a tug and barge operation should result in lower costs than a self-propelled operation, such a finding may not be based on presumption and is not supported by facts of record.

The finding that TMT is not entitled to a differential on the ground of a disability incident to slow transit time plus lower costs of operation responds to the two specific issues set forth in the Commission's Orders of Investigation. But the parties have taken a broader view of the scope of this investigation and the Commission's purpose in instituting it. TMT cites the Commission's order in the "Denial in Part of Motion to Dismiss":

Therefore, it is ordered, That this proceeding be kept open with respect to the

questions of the lawfulness of the difference in rates on the same commodities between Jacksonville, Florida and Puerto Rico and other Atlantic Ports and Puerto Rico, and of the differential with respect to the rates of TMT below those of Sea-Land.

Further reference is made to the Commission's order denying a petition to broaden the investigation, wherein it was stated:

This investigation was instituted for the specific purpose of examining the competitive relationship between Sea-Land Service Inc., Puerto Rican Division and TMT.

Intervenor Port of New York Authority proposes that port competition is directly involved in the issues before the Commission, as:

The issue of port relationships, however, is treated herein as involving additional standards of lawfulness, as implied by the Commission's separate treatment of this issue in its Denial in Part of Motion to Dismiss

.....

Sea-Land, while not taking the specific position that the issues are broadened by the above mentioned orders, has approached the question of differentials from a broader viewpoint that transit time and costs in advocating that TMT's practice of maintaining a differential is a destructive competitive practice and that TMT rates are unlawful to the extent they are less than Sea-Land's rates.

The position of the parties in treating the issue of dif-

ferentials on a broader basis than slow transit time and costs is justified. Determination of related issues serves a regulatory purpose within the general scope of Commission concern as expressed in the various orders issued. The parties have adduced evidence and briefed all issues herein discussed and their right to presentation of evidence and argument is satisfied. The prehearing conference show that broad issues were to be considered. A narrow view of the scope of this investigation would result in further proceedings to fully explore the question of entitlement to a differential. Also, slow transit time having been found to constitute a service disability, transportation conditions emanating therefrom need consideration. The general question of entitlement to a differential is not limited to service disability and costs. It may be based upon, or barred by, other transportation conditions.

**TMT's Rates under Sea-Land Rates
are not Wasteful of Revenue.**

Sea-Land argues that TMT is not entitled to a differential as a matter of law. It is true that one competitor is entitled to no greater rights than another competitor. Intercoastal Investigation, 1935, 1 U.S.S.B.B. 400, 430 (1935). It further contends that the TMT rates are unjust and unreasonable in violation of Section 18(a), Shipping Act, 1916 and Section 4, Intercoastal Shipping Act, 1933, to the extent that they are lower than Sea-Land rates applicable to the same traffic, or the rates applicable generally in the North Atlantic-Puerto

Rican trade, whichever are the lower, because TMT rates (a) are lower than necessary to meet the competition; (b) result in needless dissipation of carrier revenues; and (c) are destructive of an entire rate structure. TMT cannot successfully compete at rate parity. If its rates are lower than necessary for competitive purposes, revenue would be less than it might obtain at higher rates but that fact alone would not constitute a waste of revenue. TMT operates profitably and the fact that a carrier could make a greater profit does not make existing rates unjust or unreasonable. It is the gist of Sea-Land's argument that any rate less than parity is unlawful. This record will not support such a conclusion as hereinafter discussed.

Diversion of Cargo from Origins
Naturally Tributary to a Port.

Port of New York Authority contends that a transportation condition determinative of the unlawfulness of a differential is that cargo is diverted to Jacksonville from origins inland-rate-favorable to Elizabeth and Baltimore without justification. The Commission's recent decision in Reduction in Rates on Machinery and Tractors from United States Atlantic Ports to Ports in Puerto Rico, supra, is cited to support the argument that such a diversion subjects North Atlantic ports to undue prejudice and disadvantage in violation of Section 16 First, Shipping Act, 1916. TMT does not consider the decision final and decisive of the issue. The Examiner is asked to take official notice that the decision is

in the process of review by the United States Court of Appeals for the District of Columbia. Even assuming the propriety of official notice of the appeal, the Examiner is bound by Commission precedent and may not favorably consider the persuasive argument set forth in TMT's brief on the question of naturally tributary rights. Commission precedent stands until changed by the Commission or a Court. It is of present concern to determine whether that decision is applicable to the facts here found or may be distinguished from this proceeding because of factual differences.

The Commission in the Reduced Rates on Machinery and Tractors decision found that the TMT rates on the commodities there involved were unduly or unreasonably prejudicial to North Atlantic ports because the differentially lower TMT rates were not justified by "the cost of the respective services, by their values, or by other transportation conditions." It is of significance that the Commission also confirmed that the lawfulness of a rate does not depend upon cost factors alone and that a carrier cannot utilize a compensatory rate to drive other carriers from a trade. The facts in that decision upon which the Commission based its requirement that TMT must raise its rates to parity with a South Atlantic competitor and upon which it was found that a differential was unlawful as discriminatory in diverting cargo from origins naturally tributary to North Atlantic ports, are to be distinguished from the facts adduced in this proceeding. Here, there are no facts of record to support a conclusion

that TMT's service is of such value to shippers that they would pay higher rates. Insofar as the question of differentials is concerned, this proceeding involves an entire rate structure, not specific commodities, and it cannot be found that raising TMT's rates will have the effect of requiring one commodity to subsidize the carriage of goods essential to the Puerto Rican economy. Of particular significance, it cannot be found that TMT will in no way be injured by a higher rate other than the loss of traffic naturally tributary to North Atlantic ports. In this proceeding, it is found that TMT would be substantially injured at rate parity with Sea-Land; in all probability forced out of business if deprived of a differential. It would lose not only approximately 20% of its major moving commodities because of its less desirable service, but also be deprived of a substantial portion of its cargo from inland-rate-equal origins which in this proceeding involve not only North Atlantic ports, but Jacksonville as well because Sea-Land obtains substantial cargo from the Jacksonville area. As previously stated, it would be unrealistic to find that a customer would not select the better service if the costs of transportation were the same.

The issue of entitlement to a differential as presented in this proceeding turns on the question of rate parity. Port of New York Authority argues that TMT should be ordered to raise its rates and be deprived of a differential which unlawfully diverts cargo to Jacksonville from North Atlantic ports. Sea-Land takes the position that it has the right to meet the rates of a competitor.

The Shipping Act provisions administered by the Commission are silent on the question of differentials. But it is the rate itself which either creates or erases a differential. All rates must be just and reasonable under Section 18(a) of the Shipping Act, 1916 whether established for the purpose of creating or eliminating a differential. Section 16 First of that Act prohibits rates which cause undue or unreasonable preference or advantage to any particular person, locality, or description of traffic and which subject any particular person, locality or description of traffic to undue prejudice or disadvantage.

The existing TMT differential under Sea-Land rates serves to divert cargo from origins naturally tributary to North Atlantic ports. This fact does not of itself establish that a differential violates Section 16 First of the 1916 Act, although Port of New York Authority argues that "no words of limitation or technical diminution of such prejudice or preference can prevail in the face of a clearly expressed prohibition of the statute - 'in any respect whatsoever.'" The statutory phrase "in any respect whatsoever" refers to the kind or type of discrimination but does not prohibit determination of whether the discrimination is undue or unreasonable. A port's entitlement to cargo from origins naturally tributary to it is not unqualified. If transportation conditions exist which justify a differential, diversion from naturally tributary origins may be found neither unjust nor unreasonable, and entitlement to a differential established.

Nor is a carrier's right to meet competitive rates absolute. Rate reductions for that purpose must be just and reasonable and not discriminatory. A rate reduced for a destructive purpose is neither just nor reasonable "and the law will interfere . . . when competition . . . becomes destructive and wasteful." Intercoastal Investigation, 1935, 1 U.S.S.B.B. 400, 430 (1935). Sea-Land has no competitive necessity for establishing rate parity and eliminating the TMT differential. Its Jacksonville operation is profitable and its continuance in the trade is not threatened. It has become the dominant carrier in the trade and TMT is limited to 5% participation although TMT has had a rate advantage. In the face of these facts, Sea-Land could have but one motive in establishing rate parity, that is to drive TMT out of business, which is the predictable result, and thus obtaining virtual control for itself of the trade between Jacksonville and Puerto Rico.

It would be unjust and unreasonable to require TMT to raise its rates to Sea-Land level as Port of New York Authority proposes. Any requirement to raise lawful and compensatory rates results in increasing shipper's costs and this increase is generally passed on to the consumer. Port of New York Authority might increase its traffic by the amount of cargo from inland-rate-favorable origins now flowing through Jacksonville via TMT but to require shippers, and ultimately consumers, to pay for this relatively minor benefit would impose an unnecessary burden on Puerto Rican

economy. The record discloses that TMT competes at rate parity with South Atlantic & Caribbean Lines, Inc. (SACL) out of another Florida port. To require TMT to raise its rates would destroy its ability to compete with SACL, a self-propelled operation, because SACL would have a lower rate structure. SACL is not a party to this proceeding and its rates may not be disturbed. Sea-Land may not lower its rates to TMT level because such action would serve to divert cargo from North Atlantic ports without the transportation justification here available to TMT.

To require TMT to raise its rates to parity with Sea-Land out of Jacksonville, would be to require a destructive, thus unlawful, practice. To permit Sea-Land to lower its rates out of Jacksonville to the TMT level would be to permit a destructive, thus unlawful, practice. A port's entitlement to cargo from naturally tributary origins may be recognized but it cannot be enforced if transportation conditions require another course.

Port of New York Authority designates TMT as a marginal operator with little promise of the future and contends that to base port relationships on TMT's survival would be grossly inappropriate. That Port of New York Authority would emphasize the issue of port differentials is understandable but the basic question is the competitive relationship between respondents and TMT's entitlement, or lack of entitlement, to a differential. Entitlement is not based on any TMT right to survive lawful competition. It is not here held

that a carrier is to be deprived of the right to meet competitive rates if the reduced rates are lawful. Nor is it found that slow transit time would alone support entitlement to a differential. Entitlement is found on this record because Sea-Land's establishment of rate parity to TMT rates would have a destructive purpose and result. No transportation condition warrants rate parity, but to the contrary the elimination of a differential would result in TMT's inability to remain competitive, thus leaving to Sea-Land the virtual control of the trade between Jacksonville and Puerto Rico. This is the transportation condition which serves to distinguish this proceeding from Reduced Rates on Machinery and Tractors. A port's right to cargo from naturally tributary origins cannot be based upon an unlawful practice.

It is concluded that the discrimination resulting from a TMT differential is not undue or unreasonable or violative of Section 16 First of the Shipping Act, 1916.

An additional issue raised by Sea-Land is that TMT's practice of maintaining a differential is destructive in view of Sea-Land's determination to meet competitive rates; that a rate war will develop. The practice of maintaining a differential would be destructive if it resulted in driving a competitor from the trade, particularly if reductions resulted in noncompensatory rates. TMT, a bankrupt organization doing business for the benefit of creditors, could not survive with a noncompensatory rate structure. Sea-Land, a subsidiary of a large corporation, could survive reductions and could

soon force TMT out of business. But the existence of the present differential does not constitute a rate war. The parties have only threatened to institute destructive practices. The finding that Sea-Land cannot lower its rates to establish rate parity should deter rate reductions and a rate war. As long as TMT maintains lawful rates, and there is no finding here that existing rates are unjust or unreasonable, it may be protected from destructive practices. The proposal of Port of New York Authority that the Commission should fix rates at parity cannot be carried out for reasons hereinabove stated; and, because in the absence of a finding that existing rates are unjust or unreasonable, Section 4 of the Intercoastal Shipping Act, 1933, cannot be invoked for the purpose of fixing rates at any level.

TMT is entitled to a differential. The extent of the differential is not presented here. Had it been an issue, it could not have been determined on this record. The entire trade is involved with hundreds of commodities, many having different costs of handling, different service values, and transportation characteristics.

ULTIMATE CONCLUSIONS

1. TMT would not remain competitive at rate parity with Sea-Land. TMT's slower barge service exposes cargo to greater transportation hazard than experienced on Sea-Land's faster and more stable vessels which fact, together with other conditions influencing shipper selection of a carrier, would

cause shippers to prefer Sea-Land's service if rate parity was established.

2. There being no competitive necessity or other transportation conditions justifying rate parity, Sea-Land may not reduce its rates to TMT level when the purpose is to drive TMT out of the trade and thus obtain for itself virtual control of the trade. TMT is entitled to a differential to prevent its elimination from the trade.

3. Sea-Land may not charge different rates from the various United States Atlantic ports it serves and Puerto Rico in the absence of cost differences, difference in the value of the service, or other transportation conditions justifying different rates.

4. Sea-Land's northbound rate on scrap or used metal is lawful.

5. A port's right to cargo from origins naturally tributary to it is not unconditional; a differential which serves to divert cargo from those origins to another port is not unjustly or unduly discriminatory when the differential is justified by transportation conditions.

/s/ Herbert K. Greer
Presiding Examiner

Washington, D. C.
August 16, 1966

[Served May 9, 1967]

Sea-Land, because its Jacksonville operation is profitable and its continued operation is not threatened, has shown no competitive necessity for eliminating TMT's differential. Since rate parity would probably drive TMT out of the trade, TMT may maintain its differential.

Sea-Land has not justified its proposed differentially lower rates between Jacksonville and Puerto Rico as compared with its rates between other Atlantic ports and Puerto Rico by sufficient proof of advantages in cost of operation, value of service to shippers, or other transportation conditions warranting such reduction.

As Sea-Land's lower rate on scrap metal from Puerto Rico to Jacksonville was not suspended, Sea-Land did not have the burden of proving its lawfulness and in the absence of evidence to support a finding that the rate is unlawful, it is lawful.

Warren Price, Jr., Hugh H. Shull, Jr., and J. Scot Provan for respondent Sea-Land Service, Inc.

Homer S. Carpenter, John C. Bradley, and Edward T. Cornell for respondent TMT Trailer Ferry, Inc. (C. Gordon Anderson, Trustee).

Sidney Goldstein, General Counsel, F. A. Mulhern, Attorney, Arthur L. Winn, Jr., Samuel H. Moerman, J. Raymond Clark, and James M. Henderson for intervener Port of New York Authority.

John Rigby for intervener Commonwealth of Puerto Rico.

Donald J. Brunner and Thomas Christensen, Hearing Counsel.

REPORT

BY THE COMMISSION: (John Harllee, Chairman; Ashton C. Barrett, Vice Chairman; James V. Day, Commissioner.)

The Proceedings

The general purpose of this proceeding is to examine the competitive relationship between Sea-Land Service, Inc. Puerto Rican Division and TMT Trailer Ferry, Inc. (C. Gordon Anderson, Trustee). The specific issues are as follows:

1. Whether TMT may maintain rates differentially lower than Sea-Land's rates from Jacksonville because of TMT's method of service or level of cost.
2. Whether Sea-Land may charge different rates from Jacksonville to Puerto Rico than it charges from other Atlantic ports to Puerto Rico.
3. The lawfulness of Sea-Land's rate on scrap or used metal northbound from Puerto Rico.

Facts

TMT commenced the original roll-on/roll-off trailer service in the Florida-Puerto Rico trade in 1954.¹ TMT

¹TMT offers a tug and barge service, the barges being LSTs which have been modified to permit the movement of highway trailers on their own wheels between the dock and the deck of the vessel. The tugs operated in the service in are chartered and owned by the Florida Towing Company.

serves only the port of San Juan in Puerto Rico. It offers two sailings each week from Jacksonville; alternate voyages include a stop at Miami, Florida. Transit time for direct sailings to San Juan from Jacksonville is approximately seven days and from Jacksonville via Miami to San Juan approximately nine days. Because of the nature of the tug and barge operation, scheduled service is frequently delayed from one to three days.

Sea-Land began its service between Jacksonville and Puerto Rico in 1959 with transshipment at Port Newark, New Jersey. In April 1963, Sea-Land instituted a direct weekly service between Jacksonville and Puerto Rico, and except for a temporary reversion to the indirect service due to vessel damage, Sea-Land has continued this service.² It serves, in addition to San Juan, the Puerto Rican ports of Ponce, Arecibo, and Mayaguez and operates terminals at each Puerto Rican port as well as at Jacksonville. Transit time between Jacksonville and San Juan is three days. Sea-Land uses containerships which are loaded by crane. Not all of Sea-Land's vessels return to North Atlantic ports via Jacksonville.

²Sea-Land also operates out of the North Atlantic ports of Elizabeth, New Jersey and Baltimore, Maryland and recently began operating out of the South Atlantic port of Charleston, South Carolina.

Upon entering the Jacksonville-Puerto Rico trade, Sea-Land filed rates based on the existing rates of other carriers. TMT thereupon filed lower rates which motivated Sea-Land to reduce its rates. Sea-Land has not fully met the most recent TMT reduction.

On the eleven major-moving commodities via TMT's southbound service, its truckload rates are lower than Sea-Land's corresponding rates with the exception of the rate on tin plate. For the year 1964, approximately 20% of TMT's revenue from major-moving commodities came from cargo originating in areas rail-rate-favorable to North Atlantic ports, 37% from origins rail-rate-equal to North Atlantic ports and Jacksonville, and 32% from origins rail-rate-favorable to Jacksonville; the balance of cargo originating in areas rate favorable to Miami or from other sources.

The preponderance of Sea-Land cargo moving through Jacksonville originates in areas rail-rate-favorable to Jacksonville.³ Sea-Land's major commodities moving through Jacksonville are paper and paper products, animal feed, food products, beer, sand and clay, iron and steel products, piece goods, and refrigerator cargo of poultry, eggs, ice cream, fish, produce and frozen foods. TMT carries small amounts of these commodities. Sea-Land's rates on bottles and pap-

³ Sea-Land carries furniture out of Jacksonville from origins rail-rate-favorable to North Atlantic ports.

er products southbound are lower than the TMT rates on such commodities. Because of TMT's lower rates, Sea-Land has been unable to participate in the carriage of certain commodities.

The rates of Sea-Land from Elizabeth to Puerto Rico and from Jacksonville to Puerto Rico are on parity, with the principal exceptions of stoves and ranges southbound and rum, coconuts, and pineapples northbound, the latter rates being lower to Jacksonville than to Elizabeth. These northbound rates were reduced to meet TMT competition.

In establishing rates, TMT's principal consideration is the necessity to maintain a differential under the prevailing rates of Sea-Land because it feels it could not remain in business without a differential due to its inferior service as compared to the service offered by competitors operating self-propelled vessels.

The trade between the United States and Puerto Rico has grown rapidly from 1952 to 1964. Both Sea-Land and TMT have increased their tonnage during this period and have expanded their services. Sea-Land, upon entering the Jacksonville-Puerto Rico trade, developed new cargo and also obtained cargo formerly handled by other carriers. Sea-Land has become the dominant carrier in the trade.

Sea-Land established its present rate on scrap or used metal for the purpose of meeting TMT competition northbound. Now the rates are identical except that TMT absorbs insurance costs. As the southbound traffic substantially ex-

ceeds the northbound traffic, revenue derived by Sea-Land on the carriage of scrap and used metal serves to defray a portion of round voyage expenses. TMT does not carry scrap or used metal northbound.

At rate parity with Sea-Land, TMT probably would lose all cargo from origins rate favorable to North Atlantic ports, approximately 20% of its major moving commodities based on 1964 data, and would lose substantial amounts of cargo it has handled from origins rate equal to Jacksonville and other ports served by Sea-Land. At rate parity, TMT's ability to compete probably would be seriously crippled. Elimination of TMT from the Jacksonville-Puerto Rico trade would leave Sea-Land in virtual control of that trade.

DISCUSSION

Examiner Herbert K. Greer issued an initial decision in this proceeding. Examiner Greer decided that TMT was entitled to set rates differentially lower than Sea-Land. Although the Examiner approved Sea-Land's northbound rate on scrap metal to Jacksonville, he refused to permit Sea-Land, as a general practice, to charge rates lower between Jacksonville and Puerto Rico than between other Atlantic ports and Puerto Rico. Sea-Land excepted to the initial decision and we heard oral argument.

TMT's Rates

Generally TMT quotes rates on important commodities lower than Sea-Land's, and under this rate structure, TMT

has retained a significant share of the traffic offered at Jacksonville. Indeed, TMT by this lower rate policy has attracted cargo from inland points that could also readily be served by North Atlantic ports.

TMT's ratemaking practices present several important questions:

1. May we permit a carrier to fix rates differentially lower than its competitor's rates because of a service disability?
2. Is TMT amenable to section 16 First which prohibits undue preference to one locality (port) and undue prejudice to another locality (port) where TMT does not serve the area which is allegedly prejudiced?
3. If so, has TMT, through its ratemaking practices, unlawfully prejudiced other ports?

TMT attempted to justify its rates on important commodities because of its inferior service, specifically slower transit time and inability to maintain a regular schedule. TMT simply contends that it cannot compete with Sea-Land at rate parity.

Sea-Land argues that TMT is not entitled to a differential as a matter of law. It contends that TMT's rates are unjust and unreasonable in violation of section 18(a), Shipping Act, 1916 and section 4, Intercoastal Shipping Act, 1933, to the extent that they are lower than Sea-Land's rates or the rates applicable generally in the North Atlantic-Puerto Rican trade because TMT's rates (a) are lower than nec-

essary to meet the competition, (b) result in needless dissipation of carrier revenue, and (c) are destructive of an entire rate structure.

The Examiner found that TMT's competitive position depends on its lower level of rates, and, given rate parity, TMT's survival would be improbable. Consequently, the Examiner concluded that TMT is entitled to a rate differential to prevent its elimination from the trade.⁴

The Examiner concluded that while TMT attracted cargo from areas from which the inland rail rate was lower to a North Atlantic port than to Jacksonville, this diversion of cargo does not amount to an unlawful preference or prejudice in violation of section 16 First. Nor did the Examiner find that the prospect of a rate war between TMT and Sea-Land would be so imminent as to require rate parity between the two.

Under the system of regulation of domestic offshore commerce enunciated in the Shipping Act, 1916 and the Intercoastal Shipping Act, 1933, carriers have the initiative to set rates which fall within a general range of reasonableness and are not otherwise unlawful. Thus, various levels of rates in

⁴However, the Examiner stated that the record would not support the conclusion that TMT is entitled to lower rates as the low cost carrier. Cost-wise, The Examiner would go no further than to indicate that TMT operates profitably and its rates are not wasteful of revenue. We concur.

a single trade, or differentials, are not unlawful as such.⁵ Consequently, TMT, if it meets the broad statutory standards, may set rates lower than a competitor's. On the other hand, Sea-Land has the right to initiate rates to meet competition provided that the rates are compensatory and not lower than necessary to meet the competition. Alabama G. S. R. Co. v. United States, 340 U.S. 216, 224 (1951); Eastern-Central Ass'n. v. U. S., 321 U.S. 194, 200-02 (1944) (and cases cited at note 8); U. S. v. Chicago, M., St. P. & P. R. Co., 294 U.S. 499, 507 (1935); Oleomargarine, Cincinnati and Columbus to the East, 294 I.C.C. 349 (1955). But a carrier's right to meet competitive rates is not absolute, Atl. Refining Co. v. Ellerman & Bucknall S.S. Co., et al., 1 U.S.S.B. 242 (1932); Switching Rates in Chicago Switching District, 220 I.C.C. 119 (1937); Foodstuffs Between Mich. and Pa. and to N.J. and N.Y., 310 I.C.C. 343 (1960). Rate reductions for that purpose must be just and reasonable and not discriminatory. Regulation of rates should not only prevent discrimination and pre-

⁵Originally the Commission regarded the offering of differentially lower rates as per se subjecting competing carriers to undue and unreasonable prejudice and disadvantage. See Intercoastal Investigation, 1935, 1 U.S.S.B.B. 400 (1935). However, the Commission subsequently departed from this strict approach as explicated in Anglo-Canadian Shipping Co., Ltd., et al. v. Mitsui Steamship Company, Ltd., 4 F.M.B. 535, 540 (1955). See also: Huber Mfg. Co. v. N. V. Stoomvaart Maatschappij "Nederland", 4 F.M.B. 343 (1953) and Eden Mining Co. v. Bluefields Fruit and S. S. Co., 1 U.S.S.B., 41 (1922).

judice but should prevent destructive and unfair competition as well, including competition which threatens the traffic or financial position of another carrier. A rate reduced for a destructive purpose is neither just nor reasonable "and the law will interfere . . . when competition . . . because destructive and wasteful." Intercoastal Investigation, 1935, 1 U.S.S.B.B. 400, 430 (1935); see also: Canned Goods in Official Territory, 294 I.C.C. 371, 390 (1955).

Whether TMT may preserve its rate differential depends upon its ability to attract cargo at rate parity with Sea-Land. Of course, a primary shipper consideration in selecting a carrier is total cost of transporting a commodity from origin to destination.⁶ Where ocean freight rates are equal, minor considerations assume a major role. For instance, with slower transit time TMT's vessels are exposed to the hazards of ocean transportation for approximately twice the time experienced by Sea-Land's vessels. And hazard and the probable condition of the cargo upon arrival is a shipper concern.⁷ Furthermore, a tug and barge service is inherently less stable and less reliable. Sea-Land's service is modern and efficient. TMT's vessels are not particularly mo-

⁶ Reduced Rates on Autos - N. Atl. Coast to Puerto Rico
8 F.M.C. 404 (1965).

⁷ Sea-Land Service, Inc. v. S. Atlantic & Caribbean Line, Inc., 9 F.M.C. 338 (1966), where a shipper of trucks to Puerto Rico used another carrier because "TMT's . . . service exposed the trucks to a greater risk of damage."

dern, or in view of the inability to adhere to a schedule, efficient. We find that shippers would as a rule prefer the more modern, faster, and more dependable service of Sea-Land if rates were equal.⁸ Sea-Land argues, however, that we must consider frequency of service as a factor inducing shippers to patronize a particular carrier. Sea-Land contends that since it has a weekly service and TMT has a twice weekly service, Sea-Land operates under a service disability. We cannot agree. Because TMT's service is quite erratic, we find that at rate parity, shippers would prefer Sea-Land's dependable service.

TMT's service with respect to the commodities in question is not of such value to shippers that they would continue to patronize TMT irrespective of higher rates. Indeed, TMT will be injured if its rates are increased through loss of traffic upon which the inland rail rate is favorable to North At-

⁸Sea-Land moved to strike an attachment to TMT's reply to exceptions which contained a statement of a Sea-Land official in a proceeding before the Interstate Commerce Commission. Since the foregoing discussion of the requirements of shippers in ocean commerce rests, not upon the attachment to TMT's paper, but upon this record and our general knowledge of the subject derived over the years, it is unnecessary to rule on the motion. Likewise, it is unnecessary to rule upon the propriety of the Examiner's exclusion from the record of letters from shippers because such letters would not change the above findings. We also overrule Sea-Land's exceptions that the Examiner erred in making similar findings in the absence of shipper testimony. Such testimony is not indispensable for a discussion of the general needs of shippers.

lantic ports. TMT would also be deprived of a substantial portion of its cargo from inland-rate-equal origins and from the Jacksonville area as well. At rate parity with Sea-Land, TMT would in all probability be forced out of business. Therefore, TMT's rates must serve as its inducement to shippers.

Furthermore, Sea-Land has no competitive necessity for lowering its rates and eliminating the TMT differential. Its Jacksonville operation is profitable and its continuance in the trade is not threatened. It carries substantial volumes of cargo in the Jacksonville trade despite TMT's rate advantage. In the face of these facts, Sea-Land would, in establishing rate parity, drive TMT out of business, and thus obtaining virtual control for itself of the trade between Jacksonville and Puerto Rico.⁹ We, therefore, will not on this record permit Sea-Land to lower its rates to TMT's levels nor will we order TMT to increase its rates to the levels prevailing in the North Atlantic.

Sea-Land also asserts that the Examiner should have found that Sea-Land is the low cost carrier. We agree with the Examiner that the cost data of record are inadequate to determine which is the low cost carrier. The Sea-Land study purports to show the cost per box while TMT shows cost per measurement ton. A comparison of these data is meaningless

⁹ See: Alcoholic Liquors in Official Territory, 283 I.C.C. 219 (1951).

and no restatement of these figures is particularly trustworthy. Accordingly we cannot decide this issue on the basis of cost data in this record.

Sea-Land also argues that cargo is diverted to Jacksonville from origins inland-rate-favorable to Elizabeth and Baltimore in violation of section 16 First.¹⁰ In response TMT argues that as a matter of law it cannot be held to have violated section 16 First because it does not serve the ports in the North Atlantic which it allegedly has prejudiced.

We cannot agree with TMT's reading of section 16 First which reads:

That it shall be unlawful for any common carrier by water

...

First. To make or give any undue or unreasonable preference or advantage to any particular person, locality, or description of traffic in any respect whatsoever, or to subject any particular person, locality or description of traffic to any undue or unreasonable prejudice or disadvantage in any respect whatsoever.

This provision turns upon the correlatives, preference and prejudice. A violation depends upon these ingredients, not whether a carrier serves both ports. Thus TMT errone-

¹⁰ Sea-Land cites Reduced Rates on Machinery and Tractors from United States Atlantic Ports to Ports in Puerto, 9 F.M.C. 465 (1966), to support the argument that such a diversion subjects North Atlantic ports to undue prejudice and disadvantage in violation of section 16 First.

ously contended that as a matter of law it cannot be held to have violated section 16 First. As we stated in a similar context in Reduced Rates on Machinery and Tractors, supra, at 481, if any injury to a port is caused by the ratemaking practices of a carrier, section 16 First may be applicable.¹¹

Under these circumstances it is appropriate to determine whether TMT's rates prefer Jacksonville and prejudice other ports.

Undoubtedly, the existing TMT rates attract cargo from origins which, based upon inland rail rates, are tributary to North Atlantic ports. This does not itself establish a violation of section 16 First. Whether the drawing away of traffic results in unjust or unfair discrimination or undue or unreasonable preference is a question of fact for determination in each instance. City of Portland v. Pacific Westbound Conference, 4 F.M.B. 664 (1955); Beaumont Port Commission v. Seatrain Lines, Inc., 3 F.M.B. 556 (1951). Thus we must determine whether the rates of TMT divert traffic from a port

¹¹ Accord: Proportional Commodity Rates on Cigarettes and Tobacco, 6 F.M.B. 48, 54-55 (1960); Beaumont Port Commission v. Seatrain Lines, Inc., 3 F.M.B. 556, 565-66 (1951). Cf: Imposition of Surcharge by the Far East Conference, 9 F.M.C. 129, 139 (1965). But Cf: California Packing Corp. v. States Steamship Co. et al., 1 U.S.S.B.B. 546 (1936); Sugar from Virgin Islands to United States, 1 U.S.M.C. 695 (1938); American Peanut Corp. v. M. & M. T. Co. et al., 1 U.S.S.B. 78 (1925).

to which the area of origin is naturally tributary, to a port to which the area is not naturally tributary. Sea-Land Service, Inc. v. S. Atlantic & Caribbean Line, Inc., 9 F.M.C. 338 (1966). "Naturally tributary" is an economic concept. It depends upon the shipper's cost, the value of a carrier's service to a shipper, or other factors. Here the paucity of the record is patent. The record shows only that TMT, pursuant to an apparently reasonable rate structure, attracts cargo overland from areas which could be served by other ports. Those persons who would attack TMT's rates, must show more.¹² We will not find a violation of section 16 First on such a meagre showing. Nor will we artificially allocate cargo among ports particularly where that course would have a disastrous impact on TMT.¹³

It is argued that TMT is a marginal operator with little promise for the future, and that to base port relationships on TMT's survival would be inappropriate. The Commission is not fixing port relationships. Rather, it is regulating competition between Sea-Land and TMT. TMT's entitlement to a differential is not based on TMT's right to survive lawful competition. Nor does slow transit time alone support our

¹²U.S. v. American Export Lines, et al., 8 F.M.C. 280, 290 (1964) and cases cited there.

¹³TMT competes at rate parity with South Atlantic & Caribbean Lines, Inc. (SACL) out of another Florida port. To require TMT to raise its rates would destroy its ability to compete with SACL.

endorsement of TMT's differential. No transportation condition warrants rate parity, but to the contrary the elimination of a differential would result in TMT's inability to remain competitive, thus leaving to Sea-Land the virtual control of the trade between Jacksonville and Puerto Rico. We believe that the Puerto Rican trade is best regulated and coordinated by the preservation of TMT's service.¹⁴ The lack of a compelling transportation condition here serves to distinguish this proceeding from Reduced Rates on Machinery and Tractors, supra.

¹⁴This philosophy was expressed in Intercoastal Rate Structure, 2 U.S.M.C. 285, 311 (1940):

. . . the record points clearly to the almost inevitable result of a one rate level - a gradual mastery of the trade by carriers furnishing the better service. We should not ignore the fundamental fact that shippers will pay only in proportion to the value of the service rendered. In recognition of this principle the carriers have always found it necessary to establish differentials in order to bring about a fair distribution of intercoastal traffic. When these differentials have been narrowed or abolished, the traffic has invariably gravitated to the better equipped lines. The question posed therefore is whether a merchant marine is best promoted and encouraged by a few strong lines with a monopoly of the traffic, or a larger number offering a variety of services at rates based on the value and cost of such services.

Sea-Land's Rates

Generally speaking, Sea-Land maintains uniform rates from Atlantic ports, including Jacksonville, to Puerto Rico. Sea-Land, however, contended that because it must meet TMT's competition out of Jacksonville, it should be allowed to publish lower rates from Jacksonville than from North Atlantic ports. The Examiner, using as a test whether Sea-Land was unable to compete with TMT, concluded that the record would not support a finding of competitive necessity to justify a difference in Sea-Land's rates between various Atlantic ports. The Examiner based the determination upon the fact that Sea-Land is a strong competitor of TMT and has obtained its full share of business out of Jacksonville.

Sea-Land, because of competition, charges a lower rate on scrap or used metal to Jacksonville than it charges to North Atlantic ports. The Examiner stated that a difference in the rates on one commodity to different destinations is not unlawful per se, and since there was no evidence upon which he could otherwise find the rate to be unlawful, he found it to be lawful. In effect, the Examiner found no explicit evidence one way or the other as to the proper level of the northbound rate on scrap metal.¹⁵

Sea-Land's proposed rate structure presents the following question: To what extent may Sea-Land charge different

¹⁵No exceptions were filed to this holding. Therefore, we will not disturb this result.

rates at Jacksonville than other Atlantic ports in order to meet local competition?

As stated, Sea-Land maintains a single level of rates between Atlantic ports, including Jacksonville, and Puerto Rico. It contends, however, that the necessity of meeting TMT competition out of Jacksonville is a transportation condition warranting modification of this rate structure. In effect, Sea-Land proposes that if the Commission does not order TMT to increase rates to the prevailing level out of North Atlantic ports, Sea-Land has the right to reduce its rates out of Jacksonville to TMT's level without alteration of the rates out of North Atlantic ports. Sea-Land does not present as justification any difference in distance between North Atlantic ports to Puerto Rico than from Jacksonville, nor does it rely on any cost difference in relation to carriage between Jacksonville or between North Atlantic ports and Puerto Rico. Sea-Land propounds only its legal right to meet competition as the basis for its proposed rate policy.

Sea-Land's avowed purpose in seeking approval of different rates between North Atlantic ports and Jacksonville to Puerto Rico is to meet TMT's competition. Certainly no carrier should be required to maintain unreasonably high rates for the purpose of protecting the traffic of a competitor.¹⁶ As a general rule, each carrier should have

¹⁶Seatrains Lines, Inc. v. Akron C. & Y. Ry. Co., 243 I.C.C. 199, 214 (1940); New Automobiles in Interstate Commerce, 259 I.C.C. 475 (1945).

the opportunity to set rates which reflect the inherent advantages each has to offer so that the public may exercise its choice on cost and service. West-bound Alcoholic Liquor Carload Rates, 2 U.S.M.C. 198, 205 (1939). And carriers may reduce rates to a reasonable level to meet competition if they do not create undue preference or prejudice. Iron and Steel to Iowa, Minn., Mich., and Wisc., 297 I.C.C. 363 (1955); Brick from Mason City, Iowa, to La Crosse, Wisc., 251 I.C.C. 267 (1942); Macaroni Between L. T. L. and S.W. Territories, 238 I.C.C. 121 (1940). Furthermore, a carrier may set rates in order to retain or secure traffic which might otherwise move via a competitor provided the rate is lawful.

However, Sea-Land has not demonstrated its cost capacity to reduce rates out of Jacksonville. Thus, the Commission may not lawfully permit such a reduction without a concurrent reduction in Sea-Land's rates out of North Atlantic ports without a showing that cost or other transportation conditions justifies a rate policy which on its face works a preference to Jacksonville and prejudice to other Atlantic ports served by Sea-Land. The burden of showing these circumstances is upon Sea-Land, the carrier applying to change its rates.¹⁷

¹⁷Where the Commission has instituted an inquiry into the lawfulness of proposed rates, the carrier must produce evidence to justify them. Financial data relating to operations and reasons which impelled proposed rates are in the carrier's sole possession. Puerto Rican Rates, 2 U.S.M.C. 117, 124 (1939).

With regard to the cost data that should be adduced in justification of a proposed differential, there must be more than just a showing that the cost of operation at one port is greater than that at another competing port. Volume of traffic, competition, distance, advantages of location, character of traffic, frequency of service, and others are properly to be considered in arriving at adjustment of rates between ports. Port Differential Investigation, 1 U.S.S.B. 61, 69 (1925); Port of New York Authority v. Ab Svenska et al., 4 F.M.B. 202, 209 (1953).

Had Sea-Land adduced evidence of the difference in cost of operation between North Atlantic ports and Puerto Rico as compared to cost of operation between Jacksonville and Puerto Rico, it might have been determined that a rate difference was justified on the basis of costs of the respective services. However, the only issue of fact presented for determination is whether a rate difference between ports is justified by competitive necessity.

Competitive necessity should be approached from the standpoint that a carrier finds itself unable to compete, and not on its ability to deprive a competitor of cargo. Inter-coastal Investigation, 1935, Supra.

Here Sea-Land is a strong competitor. Sea-Land, in competition with TMT out of Jacksonville, has obtained its share of cargo.¹⁸ Sea-Land's operation is profitable. Un-

¹⁸ Sea-Land excepted to the Examiner's finding that Sea-Land can compete with TMT despite the latter's lower rates. We overrule this exception.

doubtedly, TMT's lower rates have prevented Sea-Land from capturing cargo from TMT, but Sea-Land also obtains a share of cargo from inland-rate-equal origins regardless of rate differences. Therefore, the probable result of permitting Sea-Land to maintain lower rates for its Jacksonville service than for its North Atlantic service would: (1) seriously impair TMT's ability to attract cargo, and (2) induce the movement of cargo from Sea-Land's service at North Atlantic ports to its service at Jacksonville. On this record we find that Sea-Land has not justified its proposed rate policy.

Commissioner Hearn dissenting:

I would remand this case to the Examiner for the further taking of evidence.

The majority states that the basic question is the competitive relationship between TMT and Sea-Land, and sets forth the three specific issues involved.¹ It then engages in a discussion of the issues, replete with admission of insufficiency of evidence to support satisfactory conclusions.² The parties are, therefore, now left in status quo ante because the record is devoid of evidence to warrant any satisfactory conclusions as to the basic issues.

¹Majority Opinion, page 1.

²See for example, Majority Opinion, page 6, footnote 4; page 9, and page 10.

These issues are of substantial significance. They involve fundamental principles of rate regulation and economics and should not be treated so ineffectually as they are herein. I do not think the Commission should have attempted to decide this case on this incomplete record when further production of evidence would doubtless have permitted the development of a more productive case and a more meaningful and instructive decision.

/s/ Thomas Lisi
Secretary

(SEAL)

PETITION FOR FURTHER HEARING

In the further hearing in this proceeding, if granted, Sealand would show the following facts which are relevant and which were not available to it when the record was closed:

1. Commencing on or about June 30, 1967, a service will be operated, using self-propelled vessels, between Jacksonville and Puerto Rico by South Atlantic & Caribbean Line, Inc. (SACAL). SACAL is a substantial factor in the Puerto Rican trade, having transported 173,440 measurement tons from Miami to San Juan in the year 1965. SACAL will assess generally the same rates from Jacksonville to Puerto Rico as as maintained by TMT.

The relevance of the aforementioned facts to the issues in this proceeding is obvious. The issues in the instant pro-

ceeding include among other things, whether Sea-Land will be permitted to assess the same rates from Jacksonville to Puerto Rico as assessed by TMT, which operates a tug and barge service. In major part because of the type of service operated by TMT, its slower transit time and alleged irregularity, the Commission majority has found that Sea-Land that Sea-Land does not need, and is not entitled to, rates the same as those maintained by TMT. The Commission's decision would therefore forbid Sea-Land to publish rates the same as those published by TMT.

If TMT were the only carrier in the Jacksonville/Puerto Rican trade, that would be one thing, but we now have the situation where another carrier is entering the trade, using self-propelled vessels and not subject to the alleged disabilities of TMT vis-a-vis Sea-Land; i.e., slow transit time and sailing irregularity. As stated, SACAL's rates will be generally the same as those of TMT. As the Commission's report now stands, however, Sea-Land will be precluded from meeting the SACAL rates. Obviously, this will make Sea-Land completely non-competitive, and we have no doubt could force discontinuation of its Jacksonville service.

Clearly the Commission may not decide the issues in the instant proceeding in a vacuum and without regard to all of the relevant transportation circumstances and conditions obtaining in the Jacksonville/Puerto Rican trade. The proceedings should be reopened for the purpose of adducing the above-named facts, and on the basis thereof the Commission's report should be appropriately amended.

Sea-Land again submits the comparison of TMT and SACAL published rates (Appendix A) to show that the Commission has approved similar rates between the two carriers. It has even allowed SACAL (a self-propelled vessel operator) in many instances to have rates below TMT (the tug and barge carrier) rates. Appendix "A" shows the minimum trailerload revenue under TMT's rates and the minimum and maximum trailerload revenue under SACAL's rates. Under the Commission's Decision in Docket No. 1182, Sea-Land would not be able to compete against SACAL if TMT had a higher rate; e.g., Drugs, Plumbing Materials, NOS, etc. The Commission's Decision doubly restricts Sea-Land in maintaining any competitive position in the Jacksonville/Puerto Rican trade.

* * *

ranges, non-electric, from Chicago; household washing machines from Chicago and Louisville; air-conditioners from Chicago; bicycles from Chicago; cylinders from Atlanta. (R.202-208; 494-497).

The following traffic covered by Exhibit 5, formerly moved by Sea-Land but has not moved by it (or has moved in substantially reduced volumes) since TMT has effected lower rates: stoves and ranges (electric) from Cleveland, Ohio (R. 205); stoves and ranges (non-electric) from Mansfield, Ohio (R. 205); plumbing materials from Cincinnati, Ohio (R. 208) and Detroit, Michigan (R. 209). TMT handled all of these items in the second half of 1965, except plumbing materials

from Cincinnati (R.494-7). This may have moved in 1966.

The following items apparently moved via TMT even though its rates are higher than Sea-Land's rates: bottles from Tampa, (R.466); and paper boxes from Jacksonville and Atlanta, (R.496-7).

The following traffic items, among those listed on Exhibit 5, move via TMT despite the fact that the lowest inland rail rates apply to Baltimore and/or New York rather than Jacksonville; furniture from Chicago (Ex. 5, p. 4; R.495) and from Highpoint, North Carolina (ibid); stoves or ranges, electric, from Cleveland (R.495); stoves or ranges, non-electric, from Mansfield, Ohio (R.495); household washing machines from Mansfield, Ohio, and Louisville, Kentucky (R.496); air coolers, heaters from Cleveland (R.496); plumbing materials from Detroit, Michigan (R. 497); canned goods from Chicago (R. 497).

There is other evidence of record indicating that TMT has diverted traffic from Sea-Land. Witness Sharkey testified that Sea-Land had lost the movement of synthetic rubber from Louisville, Kentucky. (R.50). Witness Gabel, for TMT, testified that in the six months ending February, 1966, TMT had handled two trailerloads of synthetic rubber. He had not checked the first part of 1965. (R.518). Witness Sharkey testified that although the inland rate on cigarettes from Durham, North Carolina, to Baltimore is less than to Jacksonville nevertheless because of TMT's ocean rate on this item is lower than Sea-Land's ocean rate, Sea-Land in

the past year has lost a substantial portion of this traffic (R. 80), which moved primarily through Baltimore (R.148).

None of the foregoing evidence was referred to in the Commission's report. TMT made no effort to dispute this showing of the extent it is controlling traffic by virtue of its lower rates vis-a-vis Sea-Land.

In addition, Exhibit 18, rejected by the Examiner with the approval of the majority, supports the proposition that total transportation cost is by far the major consideration in the selection of a carrier or port in the Jacksonville/Puerto Rican trade; that Sea-Land cannot hope to compete in that trade with TMT except at parity rates. These letters, addressed to witness Dausend, General Traffic Manager of Sea-Land by shippers to and from Puerto Rico emphasize the primary

* * *

[Served July 19, 1967]

ORDER DENYING PETITION TO
REOPEN AND RECONSIDER

In this investigation, the Commission considered the competitive relationship between Sea-Land Service, Inc. and TMT Trailer Ferry, Inc. in the Jacksonville/Puerto Rico trade. The Commission sought to determine (1) whether

TMT may maintain rates differentially lower than Sea-Land's because of TMT's method of service or level of cost; and (2) whether Sea-Land may charge lower rates from Jacksonville than from other Atlantic ports.

In its report of May 9, 1967, the Commission [Commissioner Hearn dissenting] refused to modify the prevailing rate structure. With respect to the first issue, the Commission concluded that Sea-Land, because its Jacksonville operation is profitable and its continued operation is not threatened, has shown no competitive necessity for eliminating TMT's differential. Since rate parity would probably drive TMT out of the trade, TMT may maintain its differential.

With respect to the second issue, the Commission ruled that Sea-Land has not justified its proposed differentially lower rates between Jacksonville and Puerto Rico as compared with its rates between other Atlantic ports and Puerto Rico by sufficient proof of advantages in cost of operation value of service to shippers, or other transportation conditions warranting such differentially lower rates.

On June 8, 1967, Sea-Land petitioned the Commission to reopen the record for further evidence or for reconsideration. TMT and Hearing Counsel replied in opposition.

Sea-Land states that another carrier, South Atlantic & Caribbean Line, Inc. (SACAL), has entered the trade in question with rates generally the same as those of TMT, and since Sea-Land is not entitled to rates which are the same as those maintained by TMT, it follows that Sea-Land is precluded

from meeting the rates of the new carrier as well, which will render Sea-Land completely noncompetitive and could force discontinuance of its Jacksonville/Puerto Rican service. Sea-Land wishes to enlarge the proceeding to include the question of SACAL's rates.

Sea-Land requests an opportunity to update its statement of costs, which the Commission found to be inadequate, based on studies completed since the record was closed.

Sea-Land requests an opportunity to present testimony of shippers that they are not using and will not use Sea-Land's service because its rates are higher than TMT, and at rate parity they would ship a portion of their traffic via Sea-Land and a portion via TMT. Sea-Land also wishes to offer the testimony of shippers that they are entirely dependent on Sea-Land for the movement of low grade basic commodities and refrigerated cargo.

Finally, Sea-Land seeks to prove that it is competitively disadvantaged by TMT's lower inland costs stemming from TMT's use of 40-foot trailers as against Sea-Land's 35-foot trailers; the inclusion of all-risk insurance in TMT's rates; and lower pick up and delivery charges of TMT.

The Commission has decided that it will not reopen the record as requested by Sea-Land. In this proceeding, the Commission considered the question of differentials generally; its Report is largely declaratory of the general considerations involved, including burden of proof, the type of evidence needed, and the general policy that the Commission will fol-

low in such a case. The Commission's interpretation of the applicable law in such instances would not be modified by the evidence Sea-Land would adduce. Furthermore, no order was issued against Sea-Land. It has not been required to modify its rate structure. Consequently, the Commission has decided, within its discretion, not to reopen the record.

With respect to its petition for reconsideration, Sea-Land asserts that the record does not support the conclusion that at rate parity TMT would not be able to compete with Sea-Land and probably would not be able to remain in business. Sea-Land also asserts that the record does not support the conclusion that Sea-Land has no competitive necessity for lowering its rates and eliminating the TMT differential.

Sea-Land claims that the Commission erred in holding that the cost studies of record are meaningless. Sea-Land also argues that the Commission erred in holding that TMT's rates do not result in a violation of section 16 First, because TMT is drawing substantial traffic from inland points that are naturally tributary to North Atlantic ports.

Sea-Land also claims that the Commission did not consider the possibility that Sea-Land might find it necessary to withdraw from the Jacksonville/Puerto Rican trade with the result that there would be a cessation of service in the hauling or increases in the rates on a number of basic, low grade commodities moving through Jacksonville, and there would also be a cessation of service between Jacksonville and Ponce, Mayaguez, and Arecibo.

Finally, Sea-Land argues generally that the Commission misconstrued the applicable law.

Sea-Land has failed to show any material mistake of fact or law which would warrant reconsideration. Since the various grounds argued by Sea-Land for reconsideration have been discussed in the Commission's Report, the Commission has decided not to reconsider its resolution of these arguments. The arguments of Sea-Land are either incorrect legally or unsupported by the record.

The petition is denied.

By the Commission.¹

/s/ Thomas Lisi
Secretary

(SEAL)

¹ Commissioner Hearn would grant the petition.

UNITED STATES COURT OF APPEALS FOR
THE DISTRICT OF COLUMBIA CIRCUIT

SEA-LAND SERVICE, INC.,)	
Petitioner,)	
v.)	Case No.
FEDERAL MARITIME COMMISSION and)	21,217
THE UNITED STATES OF AMERICA,)	
Respondents.)	

PREHEARING STIPULATION

ISSUES PRESENTED: Counsel for petitioner, intervenor and respondents stipulate that the issues herein are as follows:

1. Does petitioner bring before the Court any final order or final action of the Federal Maritime Commission which is subject to judicial review?
2. Are the Commission's findings that at parity rates with Sea-Land between Jacksonville and Puerto Rico, TMT would not be able to compete and that Sea-Land has no competitive necessity for lowering its rates to the TMT level, based on adequate subordinate findings and supported by substantial evidence?
3. Did the Commission err in forbidding Sea-Land to lower its rates between Jacksonville and Puerto Rico to the level maintained by TMT if the record shows that such lower rates would be fully compensatory; and in the absence of a finding that they would not be fully compensatory or that they would be unduly pref-

erential or prejudicial or otherwise in violation of the law?

4. Did the Commission err in finding not justified Sea-Land's proposed rate policy of reducing its rates between Jacksonville and Puerto Rico to the same level maintained by TMT, without simultaneously effecting comparable reductions between North Atlantic ports and Puerto Rico, even though TMT rates between Jacksonville and Puerto Rico are lower than rates applied between North Atlantic ports and Puerto Rico?
5. Did the Commission err in finding that Sea-Land has no competitive necessity to reduce its rates between Jacksonville and Puerto Rico for the reason that its operation is profitable and the continuation of its service is not threatened?
6. Did the Commission err in finding no violation of section 16, First of the Shipping Act, 1916, when the record shows that the existing TMT rates attract cargo from origins which, based on inland rail rates are tributary to North Atlantic ports?
7. Did the Commission err as a matter of law and act in contravention of Section 8 of the Merchant Marine Act, 1920 (46 USC 867) in its interpretation of the term "naturally tributary" to the ports, and in protecting TMT from the loss of traffic from areas naturally tributary to ports that it does not serve?
8. Is the Commission's conclusion that the Puerto Rico

trade is "best regulated and coordinated" by preservation of TMT's service (Report, p. 11) supported by subordinate findings, based on substantial evidence and in accordance with the law?

9. Did the Commission err in refusing to allow Sea-Land to reduce its Jacksonville - Puerto Rico rates to the TMT level, in refusing to take into account, or reopen the proceeding for the taking of evidence with respect to, the entrance of another trailership carrier in the Jacksonville - Puerto Rico trade, whose rates are generally the same as those of TMT?
10. Did the Commission err in holding that Sea-Land has the burden of proof of justifying the proposed rates even though they were not placed under suspension?
11. Did the Commission err in failing to reverse the Examiner's exclusion from the record of letters from shippers (Exhibit 18 for identification). ***

BRIEFS AND DESIGNATION OF JOINT APPENDIX: The parties hereto stipulate that briefs may be filed in typewritten form, that designation of the contents of the Joint Appendix shall be made by the parties within five days after the filing of the respective briefs. The Joint Appendix shall be prepared by the petitioner and filed within two weeks after the filing of petitioner's reply brief, and when the Joint Ap-

JA 78

pendix is printed, printed briefs shall be filed with the Court within ten (10) days thereafter.

Respectfully submitted,
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Irwin A. Seibel
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Dated: September 1967

[Filed Sept. 26, 1967]

ORDER

On consideration of the motion of TMT Trailer Ferry, Inc. for leave to intervene, it is

ORDERED by the Court that movant's aforesaid motion be granted and TMT Trailer Ferry, Inc. is allowed to intervene in this case.

Per Curiam.

[Filed Oct. 10, 1967]

PREHEARING ORDER

Counsel for the parties in the above-entitled case having submitted their stipulation pursuant to Rule 38(k) of the General Rules of this Court, and the stipulation having been considered, the stipulation is approved, and it is

ORDERED that the stipulation shall control further proceedings, in this case unless modified by further order of this court, and that the stipulation and this order shall be printed in the joint appendix herein.

[Filed Nov. 3, 1967]

Before: Burger, Tamm, and Leventhal,
Circuit Judges, in Chambers.

ORDER

On consideration of intervenor's motion to dismiss or for alternative relief, of petitioner's answer thereto, respondents' reply thereto and intervenor's reply, it is

ORDERED by the Court that intervenor's aforesaid motion is denied without prejudice to a renewal thereof in the briefs and during argument on the merits. Petitioner's time

JA 80

for filing its brief is extended for a period of 15 days from the date of this order.

Per Curiam.

Circuit Judge Leventhal did not participate in the foregoing order.

Wednesday,
February 23, 1966

* * *

[7] JAMES F. SHARKEY

* * *

[8] MR. PRICE: I think a statement of position should properly follow a receipt of evidence. I defer, however, to the Examiner.

EXAMINER GREER: It might assist Mr. Bradley, since he is in a difficult position, if you would state to him what you intend to prove by this witness.

MR. BRADLEY: I was thinking of something a little broader, Mr. Examiner, that the general position Sea-Land intends to take in this case.

EXAMINER GREER: Could you do so briefly?

MR. PRICE: I believe so.

It is Sea-Land's general position that the rates between Puerto Rico and the Atlantic Ports should be on a parity. Sea-Land has been required to reduce certain rates between Jacksonville and Puerto Rico for the reason that those rates were reduced by TMT. That is the only reason that Sea-Land has made the reductions.

While Sea-Land believes that port parity is an important relationship, it nevertheless also contends that it is entitled to meet competition where it finds it in order to participate in the movement of the traffic. We have found the competition of TMT from Jacksonville, we have attempted

to meet the competition solely so that Sea-Land can participate in the movement of the traffic.

It is our position that TMT does not require, as a practical matter, and as a matter of law is not entitled to [9] rates differentially lower than Sea-Land's rates.

It is our position that those rate reductions which TMT has effected under the Sea-Land rates should be ordered by the Commission to be raised to the Sea-Land level, or the level applied to and from North Atlantic — or Atlantic ports generally.

EXAMINER GREER: Is that satisfactory, Mr. Bradley?

MR. BRADLEY: I think so, sir.

EXAMINER GREER: Very well.

DIRECT EXAMINATION

BY MR. PRICE:

Q. Have you stated your name and business address? A. James F. Sharkey, P. O. Box. 1050, Elizabeth, New Jersey.

Q. With what company are you associated, Mr. Sharkey, and in what capacity? A. I'm associated with Sea-Land Service, Inc., and traffic manager of the Puerto Rican Division.

Q. Before further qualifying Mr. Sharkey, I will ask him to identify for the record certain exhibits which he has prepared or had prepared for introduction in this proceeding.

Will you proceed to do so, Mr. Sharkey, and also indicate any corrections that should be made? A. The first ex-

hibit we have is page 1 of three parts, and the heading is "Statement Showing Representative Commodities Shipped to Puerto Rico Via Sea-Land and TMT Indicating Ocean [10] Rates, Variance of Approximate Density or Loadability and Percentage Relationships of Sea-Land and TMT Rates."

* * *

[25] MR. GABEL: That will take considerable time, since we treat Jacksonville-Miami the same as far as we are concerned, but I assume it is possible to break this down, but it will take [26] a lot of study on my part, and March 7th — how many days is that from now?

MR. PROVAN: A week from Monday.

EXAMINER GREER: Off the record.

(Discussion off the record.)

EXAMINER GREER: On the record.

MR. PRICE: Mr. Examiner, this morning, at your request, I outlined briefly Sea-Land's position in this proceeding. I would like to make one addition to that, that if the Commission does not find that the TMT rates are unlawfully low, that Sea-Land be permitted to meet those rates even though the unfortunate result might be that they are lower than the rates generally from the Atlantic ports —

EXAMINER GREER: You are referring to differentials, in a sense?

MR. PRICE: That's correct. In other words, Sea-Land wants permission to meet the TMT rate. We hope the TMT rates will be raised to conform generally to those rates to

and from Atlantic ports, but if not, Sea-Land is going to request the right to meet them.

MR. BRADLEY: Just for clarification, do you mean you would request to meet the rates at Jacksonville and Miami while holding a higher rate at New York?

MR. PRICE: If that is necessary. If the lower rates at Jacksonville are permitted to remain in effect despite the [27] fact that they are lower than the rates of other Atlantic ports, Sea-Land wants authority to also establish the same rate.

EXAMINER GREER: Are you talking about meeting competition regardless of whether the rate is compensatory or not?

MR. PRICE: No, sir. I wasn't getting into that aspect of it.

MR. CORNELL: You would choose to meet that only in Jacksonville and Miami, is that correct?

MR. PRICE: The competition where it is, that's correct, meet the competition where it is.

MR. CORNELL: What about the Gulf Ports?

MR. PRICE: The Gulf Ports aren't in the case, as far as I know, Mr. Examiner.

EXAMINER GREER: I thought this was Jacksonville, Miami, and other Atlantic Ports.

MR. CORNELL: We were trying to find out just how far Sea-Land wants to extend this so-called equalization if they were permitted to do so.

MR. PRICE: We have stated our position.

MR. BRUNNER: I have a statement before we close the session. This morning we had this document, Summary of Trade Between the United States and Puerto Rico, 1953 to 1964, realizing the document is nothing more than an updating of a similar exhibit already in Docket 1177, to which Sea-Land was a party, and we had informed them a number of months ago that we were [28] going to up-date this as close as possible and put it in as an exhibit. I believe it goes from 1964.

* * *

[33]

Monday, March 7, 1966

* * *

[50] Q. Has Sea-Land lost any traffic to TMT? A. Yes, we have. We have lost movements of synthetic rubber from Louisville, Kentucky. We have lost appliance traffic that we enjoyed out of Michigan, and we have lost a movement of cigarettes in part.

And TMT recently reduced their rate on paper cups and plates under Sea-Land by 3 cents a cubic foot overall. And I was advised personally by the Sales Manager in San Juan that the TMT representative had been in to see him and advised him that they were now ready to handle his business and they had this savings to offer, and as a result, that he was going to use their service. And this represents 125 trailer loads per year account to Sea-Land.

That is not all the traffic, but those are an indication.

* * *

[56] A. It is my understanding at the prehearing conference that agreement was made that no comparison of rates would be made on refrigerated cargo, since Sea-Land handled refrigerated cargo, whereas TMT at least did not have any refrigerated cargo rates published in their tariff.

* * *

[94] CROSS EXAMINATION

BY MR. RIGBY:

* * *

[128] BY MR. CARPENTER:

Q. *** Will you look at page 6 on your corrected Exhibit 5, if you please, and I am talking about your stoves or ranges. As I understood your testimony, you computed that TMT had an advantage on stoves or ranges from Chicago, Illinois, to Puerto [129] Rico of as much as \$333 a trailer load. A. Yes, sir.

Q. And I believe you said that was sufficient to divert such traffic from the North Atlantic ports to the service of TMT. A. Yes, sir.

Q. Would \$297 do it as well? A. Yes, sir.

Q. If Sea-Land were to cut its rate — Sea-Land has already cut a rate out of Jacksonville to \$726, has it not, sir? A. Yes, sir.

Q. So that Sea-Land now has an advantage through Jacksonville of \$297 vis-a-vis either Baltimore or New York, isn't that true? A. Yes, sir.

Q. Has that diverted any traffic from Baltimore or New York? A. One that I know of.

Q. It has? A. Yes.

Q. One what do you mean; one truckload? A. One account that diverted down there. In addition to which Sea-Train has filed a reduced rate out of Edgewater, New Jersey, to equalize TMT and Sea-Land out of the Gulf — [130] out of Jacksonville.

Q. Do you have other accounts moving through your New York service? A. Stoves and ranges?

Q. Yes, sir. A. Our sales review didn't indicate that we handled any stoves or ranges to New York at this time or Baltimore.

Q. You did heretofore? A. I believe we did, yes.

Q. And those have now moved to the southern port, those accounts? A. This particular account that I am aware of that we handled out of Ohio switched over and started shipping through Jacksonville.

Q. Well, what about the other accounts; what happened to them? A. The other accounts I don't believe we handle out of Jacksonville.

Q. Is that the only account you handled through Elizabeth port or Baltimore of stoves or ranges? A. I believe it is.

Q. Well, would that be indicative, then, if you were to cut your rates, Mr. Sharkey, to the level of TMT out of Jacksonville that it would — or that is, on other commodities — that it would divert the traffic that you now handle through

[131] New York or Elizabeth port or Baltimore, down to your southern port of Jacksonville? A. Yes, it would.

Q. Yes, sir. A. That is why we held off in reducing rates specifically at Jacksonville.

* * *

[244] ROBERT L. DAUSEND

* * *

[247] MR. CARPENTER: That isn't the way I understood Mr. Dausend's testimony.

I would like the opportunity to cross-examine on voir dire at this time, if I may, Mr. Examiner.

EXAMINER GREER: Proceed.

VOIR DIRE EXAMINATION

BY MR. CARPENTER:

Q. Mr. Dausend, did you ask your sales people to contact shippers of these various commodities that were listed on Exhibit No. 5? A. Yes, sir. I instructed our general sales staff in Elizabeth, New Jersey, to ascertain from those shippers in the Midwestern areas that were involved in this proceeding, to write and to develop on their calls as to why we were not getting any portion or share of this business. And I asked our sales manager of the Puerto Rican Division to have these people write to me and [248] give the reasons, and the reason was the fact the TMT rate was lower.

Q. Just a moment now. You asked them to have these shippers write to you with respect to the commodities and

the origins shown on Exhibit 5, is that right, sir? A. Yes, sir, that's right.

Q. So that what you were doing was asking them to write you with respect to evidence or to provide you with evidence that you wanted to put in this case? A. Not particularly — well, it could be construed either as evidence or knowledge. I wanted direct knowledge as to why our company was not participating in these shipments of bicycles and drugs, and carload shipments.

Q. But this was a special instruction you gave your people for development of this information for use in this case?

A. It wasn't special information. We do the same thing in Texas and California, on a lot of matters.

Q. For this case do you in Texas and California? A. No. But I say our normal course of business, we make query of our sales department as to the reasons why our company is not participating in various movements, whether it is in Alaska or California or Texas or Puerto Rico.

* * *

[252] EXAMINER GREER: Well, what was the purpose of this inquiry, Mr. Dausend?

THE WITNESS: The purpose of this inquiry, Mr. Examiner, [253] was to develop why Sea-Land service, who offered a service from Jacksonville to Puerto Rico, was a water carrier the same as TMT, could not participate or share in any of this business, and because of that we wrote these letters. We had these letters written to us as a result of the contacts

made by our Sales Department. I might add, Mr. Examiner, that I have been making freight rates for our company for twenty-five years, and in many cases you do not have an opportunity to negotiate at arm's length with a shipper. A shipper will write you a letter and tell you, "Look. You've lost this business to the railroad," so you've lost it to some other competitor because of a disability and because of these letters then you go into it and make an analysis of the facts at hand, so this is what a carrier does every day, and that is what prompted us to make some determination as to why this rate disability which we found in Jacksonville precluded us from handling any of this traffic.

BY MR. CARPENTER:

Q. Mr. Dausend, this was not traffic you lost; this is traffic you never had? A. It was both. It was traffic we also lost, too.

* * *

[256] DIRECT EXAMINATION (Resumed)

BY MR. PRICE:

Q. Mr. Dausend, in the ordinary course of your business, have you determined why Sea-Land is unable to compete for a number of commodities with TMT from Jacksonville to Puerto Rico? A. Yes, sir, I have.

Q. What is the reason that you have developed? A. The reason is due to the fact that the TMT rate on the comparable commodity from Jacksonville to Puerto Rico is lower than that corresponding Sea-Land rate.

* * *

[261] EXAMINER GREER: *** In your experience as Traffic Manager of Sea-Land, Inc., what is the main incentive to a shipper to select a carrier or a port through which he ships?

THE WITNESS: The biggest incentive is the freight rate, the relative saving in freight rate that exists via one mode versus the other of the same class. That is the biggest attraction that would permit one shipper to use a carrier — the saving is the prime consideration. That has been my experience in many years of competition, not only involving water carriers but other forms of transportation.

EXAMINER GREER: Is it the ocean rate or the combined inland ocean rate that controls this situation?

THE WITNESS: I would say that the ocean rate is the crux of the situation, Mr. Examiner. However, the total charge has some bearing. What we've attempted to show is the saving that accrues from the point of origin to the landing place in Puerto Rico, but in any event, whether you consider the total or the ocean rate separately, TMT versus Sea-Land, it is a fact that the saving or the difference in the rate is the crux of the situation that makes one shipper favor a carrier versus another, generally.

* * *

[268]

CROSS EXAMINATION

BY MR. CARPENTER:

Q. I have a couple of questions. As General Traffic Manager of Sea-Land, Mr. Dausend, you have jurisdiction over not only rates and traffic matters involving Puerto Rico, but also over the coastwise operation of Sea-Land, do you not, sir? A. Not directly, no, sir.

Q. Aren't you conversant — isn't it within your jurisdiction — A. Oh, yes.

Q. — to handle the rates and traffic matters on the coastwise operations? A. Acting in a corporate capacity, yes, sir.

Q. Yes. Now, isn't it a fact, Mr. Dausend, that Sea-Land maintains lower rates between Elizabeth Port and Jacksonville, for example, than do the railroads on your general traffic?

MR. PRICE: I object to the question as wholly irrelevant.

MR. CARPENTER: Oh, it's not irrelevant!

EXAMINER GREER: What is the purpose of the question, Mr. Carpenter?

* * *

[270] THE WITNESS: What was the question?

BY MR. CARPENTER:

Q. Let me restate it. Is it not a fact that the rates of Sea-Land between Elizabeth Port and Jacksonville, which move the traffic handled by Sea-Land, are lower than the

rates maintained by the railroads in the same traffic? A. Generally, yes, the rates of Sea-Land are lower than the overland rates which are rates of a different mode of transportation.

Q. Yes. A. It's an intermodal —

Q. Competitive rate, yes, sir, and at the equivalent rates, Sea-Land loses the traffic, does it not? A. At equivalent rates?

Q. Yes, sir. A. Generally, yes, it has been our experience that because we are a water carrier, we should have — The Commission recognizes a differential for a water carrier.

Q. Well, I'm not talking about what the Commission recognizes. I mean at equivalent rates you lose the traffic? A. Well, it all depends. Yes, generally.

Q. Generally speaking that is true, that's been your experience, hasn't it? A. Yes, sir, because our mode is different than the other.

Q. And the difference is principally time in transit, [271] isn't it, Mr. Dausend? A. No, the Commission has —

Q. No, I'm talking about practicalities. A. No, the time in transit is not important. The Commission has not recognized time in transit on a trailer ship operation the same as what is involved here. Trailer operations —

Q. What is it that prompts the shipper to use the overland transportation between New York and Jacksonville at equivalent rates? A. Frequency of service, one versus the

other, is a big thing. The other is the inherent vision of water transportation — perils of the sea and others. But so far as service is concerned, service does not receive any recognition at all.

Q. Service what, sir? A. Service disabilities, time in transit, is not recognized as the need for —

Q. It is a different circumstance other than time in transit, you're telling me; is that right, sir? A. Yes, sir.

Q. That would be, I take it, reliability as well as the — you say the perils of the sea would be the reliability of the service, and — A. That's one.

Q. Is that right?

MR. PRICE: Frequency was the first one.

[272] BY MR. CARPENTER:

Q. Frequency I think you mentioned, too. A. Yes, sir.

Q. Well, of course frequency would also involve time in transit, wouldn't it? A. No, sir, not necessarily.

Q. I mean it would, though, as part of it? A. No, I don't think so.

Q. You don't? A. No, sir.

Q. If a man has a frequent service, let's say he provides a service every hour, a departure, but it takes him a week, that he'd have an advantage over a man who provides daily service that takes him only a day to make the trip? A. It would if his rate was lower.

Q. Oh, I see. A. I think that would be one of the considerations.

Q. The man with the frequent service would have to have a lower rate there, though, wouldn't he? A. No, he would not. I said the man who goes more frequently, the fact that it takes him longer to get there is not dependent on whether or not he should have a lower or higher rate.

Q. Well, what would a shipper take in a situation of that sort? How would he exercise his choice between the two carriers? [273] A. He'd use the carrier who has the lowest rate.

Q. Suppose at equal rates, which one would he use? A. Equal rates?

Q. Yes, sir. A. At equal rates, I don't know. I would not care to speculate.

Q. Well, if he could use one carrier, and get there in a week, and the other carrier and get there in a day, he would use the one that took a day, wouldn't he?

MR. PRICE: I think we are getting a little speculative here, Mr. Examiner.

MR. CARPENTER: We're examining the man's opinion; you have to be speculative.

MR. PRICE: No, let's take some commodity movement and get it down to specifics.

EXAMINER GREER: He testified that the main incentive in selecting a carrier or a port was rates. I don't think he limited it to that, but he did say that is the main incentive.

BY MR. CARPENTER:

Q. Can you answer the question? At equivalent rates,

which service would a shipper use, the one that took a day or the one that took a week, even though the man that took a week had more frequent service? A. Well, I don't think I can speculate on that. That is too hypothetical, one day versus a week — I wouldn't want to [274] say. I wouldn't know.

Q. Let's take three days versus a week, then. Would that make any difference to a shipper? A. Well, it would all depend. As you say, the man who takes a week to get there, that's probably a self-imposed disability, and I —

Q. Well, which would the shipper choose? I'm not trying to weigh the merits of the two carriers, but which would a shipper choose?

EXAMINER GREER: Are we limiting this to his experience?

MR. CARPENTER: Yes, sir.

THE WITNESS: You asked me what I would choose?

EXAMINER GREER: No, in your experience, if it is within your experience.

THE WITNESS: I just don't know if I could answer that, Mr. Examiner.

* * *

[275] Q. Mr. Dausend, what part does salesmanship, in your opinion, bear on who gets the traffic or can you make a general answer to a question such as that? A. Well, our company maintains a very extensive sales force throughout the United States, and I daresay that we've got close to several hundred sales people selling for our different services.

In these modern days, especially in our domestic services, it is important to maintain a close liaison between the Traffic Department and the Sales Department, which we do; and I daresay that this thing is efficient because we can pass onto the shippers with a high degree of efficiency, any rate changes or changes in conditions or changes in service, and that is something which an efficient company will do. But I daresay that whether or not our salesmen can go in every week and call on a man and if he can't sell them on the fact that he can save them money or he can at least get him in the ball park, he can go back there till doomsday and he won't get any business from the man. So the rate is the thing.

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[367]

Thursday, March 10, 1966

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[369]

JOHN J. GABEL

* * *

DIRECT EXAMINATION

BY MR. CARPENTER:

* * *

[371] Q. What is the business of TMT Trailer Ferry?

A. Well, TMT is a common water carrier that operates a tug and barge operation, and it operates between Jacksonville, Florida, and Miami, Florida, on the one hand, and to San Juan, Puerto Rico.

Q. And return, of course, does it not, sir? A. Yes, of course.

TMT was the original roll-on/roll-off trailer service in this trade.

Q. By that, do you mean the service that will take a highway trailer directly on to the vessel? A. That is correct. Of course, its name represents the kind of operation that TMT is, the Trailer Ferry. Its service is somewhat slower than the self-propelled vessels, and therefore has a disadvantage as far as time is concerned.

Q. Have you prepared an Exhibit showing the arrivals and departures of the TMT barges for a recent period of time, sir? A. Yes, sir. I have.

Q. What period of time does this cover? A. Well, this covers completely the first quarter of 1965 and the last part of 1964, starting roughly in the middle of November.

MR. CARPENTER: If the Examiner please, may this document, consisting of 4 pages, entitled "Arrival and Departure [372] of Barges, TMT Trailer Ferry, Inc.," be marked for identification with the next Exhibit number?

EXAMINER GREER: It will be Exhibit 22 for identification.

(The document above referred to was marked as Exhibit No. 22 for identification.)

THE WITNESS: Gentlemen —

MR. CARPENTER: Just a moment, please.

THE WITNESS: Yes, sir.

MR. CARPENTER: Was that Exhibit 22, Mr. Examiner?

EXAMINER GREER: That is right, yes.

BY MR. CARPENTER:

Q. Mr. Gabel, did you ascertain last evening, in the first block on Exhibit 22, covering the trip of the Barge FLORIDA, 'southbound No. 52, that there is an error? A. Yes, I did.

Q. And what is that? A. Instead of reading "1240", it should be "1715".

MR. CARPENTER: May that correction be made, Mr. Examiner?

EXAMINER GREER: Yes.

Does everyone have a copy?

That is under the arrival time?

THE WITNESS: The departure time.

[373] MR. CARPENTER: Departure time, Southbound 52, departure 1715.

BY MR. CARPENTER:

Q. Is that right, sir? A. 1715 is the departure time on 11-14.

Q. Looking at this Exhibit 22, will you check me, please to see if I am reading it correctly? The southbound trip 52 that you were talking about there was by the barge FLORIDA, with the tug COPPEDGE, JR., towing her, and the Captain was Captain Hurley? Is that right, sir? A. Yes, sir.

Q. And that barge came into Jacksonville on November 14 at 40 minutes past noon as northbound trip no. 46? A. That is correct.

Q. It departed at approximately — well, 15 minutes after 5:00 o'clock? That is 1715 would be 15 minutes after 5:00 o'clock, would it not, sir? A. That is correct.

Q. P.M., on the same day? A. Yes, sir.

Q. And went directly to San Juan? A. Yes.

Q. All right, sir. Now, in the next line, tell us what that barge, which I take it was the CAROLINA, what it did. A. Okay. The CAROLINA, with the COPPEDGE, III, [374] Captain Daugherty, arrived in Jacksonville at northbound 48 on November 16 at 2215 hours.

Q. Which would be shortly before midnight? A. Yes, sir. And it left Jacksonville as southbound 54 on the 17th of November at 1550 hours.

This particular vessel went to Miami and arrived in Miami on 11-19 at 1300 hours, and departed Miami on the same day at 2055 hours for San Juan, and arrived in San Juan on 11-26 at 2230 hours.

Q. Is there any pattern that the TMT Trailer Ferry endeavors to follow in the operation of these barges insofar as their departures from Jacksonville are concerned? A. Yes, sir.

Q. Tell us what it is, sir. A. Generally every other vessel stops off in Miami. In other words, one goes direct and one stops in Miami, every other vessel, generally speaking.

Q. What you are saying is that on your southbound trips from Jacksonville — A. Roughly one-half of the voyages stop at Miami.

Q. And does the company encounter difficulty in keeping precisely to that schedule? A. Yes, on account of our operations being a tug and barge service, and it is sort of difficult to plan exactly when you are going to sail.

* * *

[377] Q. Mr. Gabel, does TMT Trailer Ferry keep a current record of these arrivals and departures? A. Yes, we do.

Q. And that is what this is? A. That is what this is. This was current at the time.

Q. Why were these entries made with respect to the experimental trailers? A. Well, we wanted to make sure we knew where these particular trailers were, because we were running various checks. Upon arrival, we wanted to make sure that the personnel in the terminals would be able to spot these, or we could easily identify where these trailers were.

Q. At the time these were being kept — A. Right.

Q. — at that particular time, you were making these entries, is that right? A. That is correct.

Q. Mr. Gabel, do you have with you a copy of an Exhibit that was submitted in another proceeding? A. Yes, I do.

Q. It also shows arrivals and departures? A. Yes, it does.

MR. CARPENTER: If the Examiner please, may this next document, consisting of 6 pages, which was an Exhibit in Docket 1187, be marked for identification with the next number, [378] please.

EXAMINER GREER: Exhibit 23 for identification.

(The document above referred to was marked as Exhibit No. 23 for identification.)

BY MR. CARPENTER:

Q. Mr. Gabel, the document identified as Exhibit No. 23 has substantially the same type of information on it, does it not — A. Yes, it does.

Q. — that appeared on Exhibit 22, and covers an earlier period? I believe primarily the year 1963? A. Yes, sir, and part of 1962.

* * *

[383] Q. Did you hear Mr. Sharkey testify about the traffic that he thinks was diverted from Sea-Land to TMT Trailer Ferry? A. Yes, I heard that testimony.

Q. Have you prepared an Exhibit to show the revenues of TMT from traffic in the commodities listed on pages 2 and 3 of Exhibit 1? A. Yes, sir.

MR. CARPENTER: If the Examiner please, may this next single sheet document be marked?

EXAMINER GREER: It will be marked Exhibit No. 27 for identification.

(The document above referred to was marked as Exhibit No. 27 for identification.)

MR. CARPENTER: That reads, Mr. Examiner: "Statement showing southbound TMT revenue from major commodities carried by Sea-Land — 1964."

[384] May we go off the record?

EXAMINER GREER: Off the record.

(Discussion off the record.)

EXAMINER GREER: On the record.

BY MR. CARPENTER:

Q. Mr. Gabel, there had been some discussion in the earlier sessions of these hearings respecting the transportation of low-grade commodities. Does TMT handle any low-grade commodities? A. Yes, we do.

Q. Have you some information there respecting the volume of lumber, poles, and piling? A. Yes, I do.

Q. Would you tell us what it is please. A. During 1964, TMT derived roughly \$82,100 from this category.

MR. PRICE: May we have that category again, specifically?

THE WITNESS: Poles, pilings and lumber.

BY MR. CARPENTER:

Q. Mr. Gabel, Mr. Sharkey specifically mentioned a movement of synthetic rubber that he said he was quite confident had been lost to TMT Trailer Ferry. In your duties, do you see the bills of lading covering the shipments made by the facilities of TMT? [385] A. Yes, I do.

Q. How closely do you review those? A. Well, I generally take a look at every bill of lading.

Q. Mr. Gabel, do you have any knowledge whatever of any movement of synthetic rubber? A. I have no knowledge of movement of synthetic rubber by TMT.

Q. Mr. Sharkey also mentioned cigarettes and said that

there were trailer load movements of part of which had been lost to TMT.

Do you know of any regular trailer load movements of cigarettes by TMT? A. Not of regular trailer loads, but we have been having LTL shipments.

Q. He also mentioned household appliances. How about those? A. We do handle household appliances, but we have handled household appliances for a long time.

Q. Has there been any development in that area? A. In relation to what, Mr. Carpenter?

Q. Shifts in traffic handled. A. Yes. TMT has lost very much of its appliance traffic. To whom I don't know for sure, but everybody can speculate.

Q. There was also mention made of machinery, NOS, I believe out of Harrisburg, Pennsylvania. Do you know of any [386] such movement by TMT? A. To my knowledge we haven't moved machinery from Harrisburg, Pennsylvania.

Q. How about furniture out of Grand Rapids? A. We have had some out of Michigan, but it has been LTL shipments and of no significance whatever.

Q. Bicycles? A. We handled some bicycles on LTL shipments, and I believe that we may have — we have had 1 trailer load of bicycles, and possibly two. But in a study that I was doing outside of — not in connection with this particular hearing, I noted that it was under 3. So it was either 2 or 1, I don't know which; but we do have LTL shipments of bicycles.

Q. Mr. Gabel, there was mention, I believe by Mr. Sharkey, of the fact that the boxes utilized in the service of Sea-Land are 35 foot items. I think he said that TMT has been using a 45 foot trailer. A. Yes, we have been.

Q. Could you give us the cubic capacity of these 40 foot trailer? A. Yes. Let me get my — the TMT 40 foot trailers of two general types, and the cubic of the trailers is 2545 cubic feet and 2535 cubic feet. So they are relatively the same size.

Q. Would you tell me how many of those moved in the southbound operation during the first year of 1965?

* * *

[481]

Tuesday, April 12, 1966

* * *

[487]

REDIRECT EXAMINATION

BY MR. CARPENTER:

* * *

[493] Q. Mr. Gabel, you were requested with respect to Exhibit 5 to develop some information as to the origins of traffic, if any, handled by TMT in the category — I am sorry, of the descriptions such as refrigerators, set out on Exhibit 5. And I believe the limitation that we put upon it was that you would do this by states to the extent of your ability, without disclosing the actual origin points.

Do you recall that, sir? A. Yes, I do.

Q. Do you have with you the results of that survey which you did? A. Yes, I do.

Q. So you could tell us the approximate volume of the [494] travel that was handled, if any? A. Yes.

MR. PRICE: May I interrupt?

Mr. Carpenter, didn't you also say your breakdown within the state so far as whether there is differential territory or not?

MR. CARPENTER: Yes, I think he was going to do that.

BY MR. CARPENTER:

Q. Did you do that, too? A. I found in almost every instance the state was in completely one place or the other on Exhibit 5.

Q. I see. All right, sir. Will you now go to Exhibit 5 and with respect to household refrigerators, tell us as best you can now the information that you were supposed to supply here. A. All right. As far as refrigerators out of Illinois and Kentucky, I have broken it down into the first half and second half of 1965; and during all periods, we had refrigerators out of both places.

Then machinery other than the earth moving variety, out of Illinois —

MR. PRICE: Let's go a little slower here.

Are you now on page 2, Mr. Gabel?

THE WITNESS: I have it on a separate sheet of paper.

MR. PRICE: Would you indicate what kind of machinery as you go along, so it will save time?

[495] THE WITNESS: Okay.

This is machinery other than earth moving. This is all

machinery except for earth moving, road making, scrapers, and so on. Out of Illinois we had cargo during both the first half and the last half. From Pennsylvania, we had none during 1965. For Kentucky —

BY MR. CARPENTER:

Q. Again, with respect to machinery other than earth moving? A. Yes, other than earth moving machinery.

For Kentucky we had some during the first half and we had a little during the second half.

Furniture out of Illinois, we had a little during the first half and a little during the second half. Kentucky, we had a little out of there during both halves of the year. For North Carolina, we had furniture during both periods. For Pennsylvania we had no furniture.

Stoves, electric, from Illinois, we had stoves the entire year. The same for Ohio, and Pennsylvania we had none.

Nonelectric stoves, from Illinois we had them during both the first and second halves of the year. For Ohio we had them during the first half and very, very small shipments, or very little during the last half. From Tennessee we had none nonelectric stoves during the entire year, and Pennsylvania we had none.

[496] The household laundry equipment, from Illinois we had them during the first half and none during the second half. For Ohio and Kentucky, we had them during the entire year.

Air conditioners, from Illinois we had some small shipments, and during the second half we had very, very little.

For Ohio, we had them during the first half and very little, under 100, during the second half. Georgia we had none during the first half and very little during the second half.

Television sets, from Illinois, yes, we had them during the first half. We had very little during the second half, under \$100 revenue. Georgia we had none.

Bicycles, out of Illinois, yes, we had them during both parts of the year.

Drugs, out of Illinois, yes, and out of Georgia, no.

Iron and steel, from Alabama, Illinois, we had none.

MR. BRUNNER: Would you repeat that? Is that none?

THE WITNESS: None.

MR. CLARK: Iron and steel wire?

THE WITNESS: Iron and steel wire, yes.

Tin plate out of West Virginia, we had none.

Toilet paper, out of North Carolina, none. Out of Florida, for toilet paper, none.

Bottles, from Florida, yes, both parts of the year; from Georgia, none.

Paper boxes, we had a little during the first half [497] and very little during the second half. And in Georgia we had none during the first half and very little during the second half.

Cylinders, out of Georgia, we had them during both halves of the year.

Wrapping paper, paper bags, from Florida, none.

Plumbing materials, from Ohio we didn't have any.

From Michigan during the first half we didn't have any, during the second half we did.

Synthetic yarn, from South Carolina, first half little, and the second half no.

Cigarettes, from North Carolina, we had them during both the first and second halves of the year.

Canned goods, out of Illinois, we had them during the first half and very little during the second half.

Leaf tobacco, out of Virginia, no.

* * *

[520] MR. CARPENTER: May we call Mr. Thouvenelle as the next witness, Mr. Examiner?

EXAMINER GREER: Will you be sworn, Mr. Thouvenelle.

Whereupon,

B. E. THOUVENELLE

was called as a witness, and having been first duly sworn, was examined and testified as follows:

DIRECT EXAMINATION

BY MR. CARPENTER:

Q. Will you please state your name and business address for the record? A. My initials are B. E.; my last name is Thouvenelle, T-h-o-u-v, as in Victor, e-n-e-l-l-e.

Address, 1721 Northeast Miami Court, Miami, Florida.

Q. Mr. Thouvenelle, you are employed by the trustee-

ship of TMT, are you not? A. Yes, sir, I am a part of the trusteeship.

Q. And in what capacity do you serve? A. Court appointed as general manager.

Q. How long have you held that position, please, sir? A. About 6 years, although I did some specialized work before that, and did some work indirectly for the trusteeship [521] almost from its inception.

Q. Tell us what TMT is, if you please. A. It is a water carrier between the State of Florida and Puerto Rico.

Q. Do you operate out of — how many ports in Florida, please? A. Two, Miami and Jacksonville.

Q. And what ports in Puerto Rico do you serve? A. San Juan.

Q. What is the nature of the operation? That is, how is it conducted? By what sort of vessels? A. By tug and barge operation.

Q. How many barges does it have, please, sir? A. Five.

Q. And the nature of those is what? A. They are converted LST's.

Q. How many tugs does it have? A. The tugs are leased and there is one tug leased for each one of them.

Q. By leased, do you mean you actually operate the tug yourself or do you contract for the towing service? A. No, that is under what would properly be described as a charter.

Q. What is the status of the reorganization of TMT at the present time? [522] A. Well, after approximately 8

years, there is one remaining appeal in the Fifth Appellate Court.

Q. Under the plan of reorganization, who would the owners of TMT be if the plan is ultimately approved? A. The creditors, as it was established when the trusteeship was first initiated.

Q. What is the approximate size of the annual revenues of TMT? A. \$5 million-plus.

Q. What is your competition, if any? A. It is growing each year I think. Do you want it by carriers?

Q. Yes, sir. A. Out of Miami principally is South Atlantic. Out of Jacksonville —

Q. South Atlantic and Caribbean Line? A. Yes. Commonly called SACL. Out of Jacksonville, Sea-Land.

Q. Is there any competition offered off the Atlantic coast from any other ports? A. Well, from all along the Atlantic ports, as well as the Gulf.

Q. What operations are conducted out of the Gulf? A. Well, there are several, but the principal one is Gulf-Puerto Rico Lines, which is a part of Sea-Land.

[523] Q. Have you any idea what proportion of the total traffic that moves from the Gulf ports and from the Atlantic ports to Puerto Rico is handled by TMT? A. Substantially less than 5 percent.

Q. When was the operation of TMT commenced? A. In 1954.

Q. Was there any other operation of a trailer-ship at

that time to Puerto Rico? A. No, sir. We were the first ones to bring a trailer into the island of Puerto Rico.

Q. Are you familiar with the type of operation conducted by Sea-Land, the so-called containership operation? A. Yes, sir, I am.

Q. Was there any operation of that sort conducted there? A. No, sir, not until several years later.

Q. What is the sales organization of TMT, please? A. We have an office in San Juan, in Miami, Jacksonville, New York, and Chicago; 6 sales people involved.

Q. By the way, is TMT an entirely nonunion operation? A. No, sir. It depends upon the circumstances.

Q. Is your operations in Puerto Rico entirely union? A. Basically, yes.

Q. Mr. Thouvenelle, you commented earlier that the competition of TMT appeared to be growing. During your tenure with the trusteeship there, has this been your personal [524] observation? Have you seen a growing competition for the traffic? A. Yes, sir, no question about it, out of all ports.

Q. At pages 47 to 49 of the transcript, Mr. Sharkey testified with respect to the rate on rum, from Puerto Rico to Jacksonville, and he said that the rate by Sea-Land used to be \$1.45, then it was cut to \$1.40 in order to meet TMT, and that TMT thereupon cut its rate to \$1.35. Is this true? A. That's part of the picture. That isn't the whole story.

Q. Well, please tell us what the entire story is then. A.

Well, at the time there was a rate that TMT had of \$1.40, also Sea-Land's rate was \$1.40. Ours was originally established in 1958 at \$1.40, and it was part of an old steamship tariff which we took over and adapted, and I — just as a general statement, I want to say that through most of these hearings, which have been increasing in frequency and intensity for over 6 years, TMT has not been the aggressor in the rate cuts. They have almost uniformly been initiated by someone else.

In this particular instance, the first competition that came out of this was not a question of what transpired between Sea-Land and ourselves, but the introduction of SACL, who, on a self-propelled basis, came in and adapted practically our tariff, with the exception of some advantages to themselves, which we protested but which were not accepted.

Now, the first move that was made after SACL introduced [525] it in April 1962 was in August 1963, when they eliminated the arrimo charge in Puerto Rico.

Then on the 16th of February 1965, Sea-Land eliminated the arrimo. Ours still remained \$1.40.

Then in February 1965, we reduced our rate to \$1.35 as a result of the change made before, and subsequently that same year SACL reduced their rate again to eliminate the arrimo. And that is the history of the rum as far as the rates are concerned.

Q. Was TMT endeavoring to maintain a differential under the rates of the self-propelled carriers with respect to

rum? A. You have to make a general statement. From its inception, TMT, as I said, accepted the tariff from the old South Atlantic and Caribbean conference with some modifications. We have lived with that except where we were forced to change.

In that time, one of the biggest factors that occurred were two general rate increases by the — we will say the other carriers, we being the only tug and barge operation. So the self-propelled carriers made two generating bases. So as we have developed over the years, we have become somewhat specialized as a carrier, and during this time, any rate changes have not been primarily for the addition of cargo; it is what we have generated by the method in which we procured the customers and the ability to perform the carriage which we undertook.

Q. Mr. Dausend has already testified in this proceeding, Mr. Thouvenelle, that size of the rate is the controlling [526] consideration to the shipper in determining the carrier which he will use for transportation to Puerto Rico. Are you in agreement with that statement? A. No, it is one of the factors, but there are a lot of others and it is rather difficult to make any generalities weighting them.

Insofar as we are concerned in our experience with the various customers, there has been only one conclusion, and that is the total cost, the landed cost in his position from where the shipment originated. And then from then on were factors, such as the length of time, the type of service that

was performed by it — it has not been a question of just the water rate or the inland rate. The fact of the matter is that very, very seldom does a customer ever talk about the rate to the port. All he wants to know is what it will cost him, when he will get it there, what condition, what relationship between himself and the carrier.

Q. The length of time that a shipment is in transit you say is one consideration? A. Yes.

Q. Why would it be a consideration in this instance, sir?

A. Well, there are several factors in it. One is, as I said, the type of service that is performed.

One of the essential elements is the investment of the cargo itself. The question in our particular instance has always [527] been a problem of voyage time plus the fact that we have an irregularity in the sailing, in which we can't say the same as anyone else, we will sail every Friday or any particular hour of the day. We have a variation that runs frequently 1 to 3 days.

We also haven't the same circumstances in the matter of discharge of the cargo, because the customers uniformly like to know in advance when a boat is going to arrive or when they can pick up their cargo. Many times we disappoint them for as much as 3 days. And having made arrangement for that cargo with the expectation of it being there, we constantly have an adjustment to make with them in some sort of manner, not monetarily but for them to be able to adapt their business to this condition which we cannot control.

Q. Mr. Dausend indicated that except as to equivalent rates, Sea-Land would be incapable of attracting traffic in competition with TMT.

Has that been your observation from your own experience there? A. Well, going to back to one obvious thing, we started the Puerto Rican trade before Sea-Land entered with their containerships. They have grown to be the dominant carrier. Our volume of the business is less than 5 percent of it. And with their rate structure from the other ports, and also in the case particularly of Jacksonville, it is our opinion, our evidence, and our knowledge from the shipping public that they are [528] experiencing a rapid increasing volume of business out of Jacksonville since its inception.

Q. Mr. Sharkey referred to traffic which he said had been lost to TMT, and he referred — and I am talking now about page 50 of the transcript — to 3 commodities, synthetic rubber from Louisville, appliances out of Michigan, and cigarettes he said in part.

Dealing with synthetic rubbers, please, sir, can you tell us whether TMT took that traffic from Sea-Land? A. Well, I think if you want to go back to it, since we were the first carrier and the only one who was operating between Jacksonville or Florida and Puerto Rico, we might say over the period of years what the others have taken out of there they diverted from us in the fact we were the only carrier and were carrying cargo as a common carrier at that time.

Getting to the Synthetic Rubber Company, which is in Louisville, I went back through the record and we have been carrying it at least since the first of 1963, and probably could have gone before that, but I didn't look at it.

In the case of appliances out of Michigan, we have been carrying one account — I went back through 1961, and we have been carrying refrigerators out of that place since then.

As far as the cigarettes are concerned, we have solicited that business consistently for a number of years. And back in the early days before my time, before the trusteeship, [529] it was common cargo as far as the carrying of cigarettes is concerned by TMT to Puerto Rico.

During the forepart of 1965, without any more explanation than that, one of them asked as to carry cigarettes to Puerto Rico. Since that time we have carried part of their cargo. It is my understanding it is not all of the shipments which they take there. So for whatever it is worth at all, with the advantage in rates which Sea-Land has said that is a disadvantage to them, and none of the others have come to us and we haven't found any basis for them wanting to change. So with their own decision and with the matter of rates, we still have not taken the business away from them.

Q. Also at page 50 of the transcript, Mr. Sharkey referred to paper cups. I think he said that there was a rate reduction of TMT, or that he was threatened with a loss of some traffic in paper cups. Are you familiar with that, sir?

A. I am familiar with it in this respect, in our calls to soli-

cit various accounts, this was one that we have talked to at various times. And about 6 months or so ago, out of it all, when they showed the distribution on the island, they said they thought — and with the adjustment in the rate — that we could participate in the carriage of some of the paper products.

After spending considerable time, we did reach the conclusion as to a change in the rate, but nothing has moved. And when we talked to them last, which was just a few weeks ago, [530] they said that the impending port of call being added by Sea-Land was changing the picture materially, and they would have to be calculating quite possibly they couldn't favor us with any of the cargo in the future. So at the present time, there hasn't been the loss of even one credit.

MR. PRICE: Mr. Examiner, Mr. Carpenter objected strenuously to Mr. Dausend telling us what shippers tell us.

I have listened to quite a bit of hearsay, and I am not going to listen to any more without objecting.

MR. CARPENTER: I did not, sir.

EXAMINER GREER: It is my understanding Mr. Dausend testified what shippers were —

MR. CARPENTER: It is letters I was objecting to.

EXAMINER GREER: If that is contrary to your memory, bring Mr. Dausend back and we will permit him to testify.

MR. PRICE: We ought to at least have the names of the shippers.

MR. CARPENTER: I disagree.

EXAMINER GREER: We are talking about one commodity at the moment.

THE WITNESS: Yes, sir, cigarettes.

MR. CARPENTER: And paper cups. May I go ahead?

EXAMINER GREER: Go ahead.

[531] BY MR. CARPENTER:

Q. At pages 54 and 55 of the transcript, Mr. Sharkey said that Sea-Land had cut its rate on scrap metal from Puerto Rico to Jacksonville to the level of TMT, but it got no traffic because TMT provides marine insurance.

What is your knowledge in that respect, please, sir? A. Well, may I answer it in 2 parts. To begin with, we don't carry any scrap metal. And insofar as the marine rates are concerned, he has testified to it, and unless it is necessary, I don't need to go any further into it.

Q. Well, I think he stated that that amounted to 10 cents a hundred, and the value of the shipment was about \$600 per trailer. A. That's right.

Q. He said that made a difference of \$6 a trailer. Well, his arithmetic was a little off anyhow, wasn't it? A. I don't know whether it was that or whether he was valuing the insurance. I don't know which way it was.

Q. With respect to the marine insurance, why does TMT provide that in its rate? A. We will go back. Historically there was a constant problem in the normal operation in which each shipper contracted for his own insurance. There

was a great variation reported to us by the shippers in which one would say his rate was so much and another one would say his rate was different, and there [532] would be —

Q. You are talking about marine insurance? A. Yes, marine insurance.

Q. Yes, sir. A. And because of that fact, and with what efforts TMT had made talking to those various insurance groups or underwriters, it was concluded that we would best serve the customers if we could offer them a constant rate. And that is the basis on which this evolved and the way it stands at the present time. There was a historic reason for it; insofar as we are concerned, it is still applicable.

Q. Was part of the difficulty in that respect the fact TMT was a tug and barge operation rather than self-propelled? A. Yes, historically, the underwriters have only recognized self-propelled and barge operation. There are no classifications insofar as barges are concerned. They are unclassified.

Q. And pages 60 and 62 of the transcript, Mr. Sharkey said that the rates of TMT on nonelectric machinery are low enough to attract traffic from Harrisburg, Pennsylvania. Did you ever get any nonelectric machinery from Harrisburg, Pennsylvania, to your knowledge? A. We haven't found in our records any shipments coming out of Harrisburg, Pennsylvania in the past several years.

Q. At pages 62 and 63, Mr. Sharkey talked about furniture out of Chicago, Louisville, and High Point, and said it

was [533] advantageous to the shipper to ship through Jacksonville by way of TMT. Do you have a comment with respect to that, please? A. I have only one comment, because this is sort of repetitious.

Of these various items, it seemed to us they are a comparison of tariff items, not what cargo is being moved, particularly insofar as TMT is concerned. Insofar as the furniture is concerned, it is very negligible except out of the Carolinas, where we have handled a varying and growing amount for the last several years.

Q. You made reference to a new port of call by Sea-Land, what call is that? A. Charleston.

Q. S. C.? A. Yes.

Q. In your judgment, is that going to have any effect on your furniture carriage out of the Carolinas? A. Yes.

Q. What is your judgment in that respect? A. I think there would be a recasting of it and we may lose a substantial portion of it.

I haven't all the figures on it and I haven't the final conclusion, and there are other factors that might be involved in it, but that is the indication at the present time.

Q. Page 64, Mr. Sharkey referred to what he said was [534] diversion of furniture out of Grand Rapids. He said that will occur, too. Have you got any of that? A. I have no knowledge at all. During the year 1965, we had a revenue of less than \$3,000 of that classification out of Michigan.

I have no idea what the reference is to. They may be losing good competition to someone else. It wouldn't always have to be TMT.

Q. Pages 75 and 76 of the record, Mr. Sharkey referred to a movement of bottles, which he said amounted to 700 to 800 trailer loads annually, and he said that at the present time Sea-Land has a rate advantage of \$99 per trailer.

I took it that he meant his rate resulted in charges of \$99 per trailer less than the rates of TMT.

Does TMT handle bottles? A. Without going into too much detail, all I can say is that going back to 1962, we had a rate of 32 cents a cube. Since that time we have only made one or two minor changes, all of which have been after some specific change has been made by Sea-Land, of which there have probably been 6 or 8 during that time.

I, without knowing in detail the basis of what was offered to them and how they are handling it, I can't tell you what it was. All I can say is it has finally stabilized. It appears to me that the most recent ones are just under TMT's [535] rates. I can't give you any more information on it, or tariffs in existence.

Q. Did you — A. We handle some bottles.

Q. You say you do? A. We handle some bottles.

Q. Mr. Thouvenelle, did you read the testimony of Mr. Robert Dausend in the transcript of this proceeding? A. Yes.

Q. Particularly at the very end of it where he said that rate is the dominant consideration and that this was what de-

terminated the choice of carrier by the shipper? A. Well —

Q. Did you read that, sir? A. Yes, I read that.

Q. Did you read his reference to the differential in rates between Sea-Land and the railroads, and his explanation that these were different modes of transport? A. Well, it is all competition as far as I am concerned, just the same as between TMT and barge and tug operation in South El Paso. Insofar as I can understand, your situation is somewhat analogous, between their competition and the railroads as between ourselves.

Q. In other words, the tug and barge operation is a different type of operation, is it not, sir? [537] A. Yes, sir.

Q. And a self-propelled operation? A. Absolutely.

Q. Just like a self-propelled operation is a different type of operation than a railroad? A. Yes, sir.

Q. Mr. Thouvenelle, at equivalent rates, which service is the shipper going to choose out of Jacksonville, TMT or Sea-Land? A. Well, on equivalent rates, anything else being equal at all, obviously the advantage is great for Sea-Land. Their growing volume of cargo, according to our observation, out of there would indicate that at the present rate, sir. We also have had experience with direct competition with self-propelled vessels out of that port and other ports, sir.

Q. Have you had experience out of Miami with a self-propelled competitor with equivalent rates? A. Yes, we have. Our character changed from the time he entered the market and has remained basically that way.

[536]* * * but while we are passing, I would like to mention it.

In the matter of the bicycles coming out of Illinois, I looked back to the account and we have had it back in 1962. In my understanding, we did business with them before that time. So I don't understand the diversion.

It is merely a little bit of repetition, on the drugs and medicine I wanted the report to show also there has been no diversion to TMT. There was a time in which we handled for some of the drug companies a substantial volume of business, which we lost when SACL came into their \$700 rate; and even though we made two rate changes since, we have never attracted any of it back to us at all.

And there are several others that could be mentioned, but I don't think there is any reason to add the detail to the record.

MR. CARPENTER: Thank you, Mr. Thouvenelle.

EXAMINER GREER: Mr. Brunner, you must leave at 12:00, I understand.

MR. BRUNNER: Yes, sir.

EXAMINER GREER: How long will this situation delay us?

MR. BRUNNER: I hope to be back by 2:00.

EXAMINER GREER: By 2:00?

We will recess until 2:00 o'clock, at which time we have cross-examination by Mr. Price.

* * *

[539] CROSS EXAMINATION

BY MR. PRICE:

* * *

[553] Q. You have no present plans for self-propelled operation? A. No, sir.

* * *

[594] (Mr. Sharkey resumed the stand, having been previously sworn.)

[595] MR. PRICE: Also this isn't our exhibit. We have no objection to his testifying to how it was compiled.

EXAMINER GREER: I have considered as your exhibit, Mr. Price, because it concerns your business. The fact that you gentlemen agreed that someone would put in somebody else's exhibit is certainly, as I said in one ruling, not binding on me, and I must rely on Sea-Land to support its own data.

FURTHER CROSS EXAMINATION

BY MR. CARPENTER:

Q. Mr. Sharkey, do you have a copy of Exhibit 17 there before you, please? I would like to go first of all to line 9 on page 1, electrical equipment. You showed that there you had a little better than half a million dollars worth of traffic of that sort that went through the Port of New York and originated in an area that was favorable to New York insofar as inland rates are concerned, and then you showed \$18,000 from the equalized area. How were those figures determined?

MR. CLARK: I am going to object to the question because in this last discussion that we had off the record I understood that no check of New York favorable, Jacksonville favorable was made.

EXAMINER GREER: The witness can answer the question.

MR. CARPENTER: I said what the exhibit showed, and I asked him how they were determined.

MR. CLARK: Don't lead him.

[596] THE WITNESS: We take 6-week commodity statistics run to give us a representative period by the commodity code number of shippers. We put each one of those shipments, origin points of shipping point — from that point, from that area, we determine the equalized area which is according to the Tod Knott formula and if it came into that so-called equalized area, Chicago down through Indianapolis over through Cincinnati, Louisville, and over to points west of that, we assigned that into the equalized area.

If it was east of that point, we assigned it to the port over which it moved. If the rate from Mansfield, Ohio, was the to Baltimore or New York, we list it under the port that the traffic moved.

BY MR. CARPENTER:

Q. Well, what do you mean by the Tod Knott formula? Would those be the class rates? A. Yes, sir.

Q. And you merely went to the classroom tariffs and determined the extent of the equalized area and never checked

out the actual applicable rates on the traffic? A. We did not check specific commodity rates as specific rates. We just used the equalized area.

Q. So that from the standpoint of practicality this exhibit would not show then, would it, whether the traffic actually had rates favorable to New York or whether they [597] might have been favorable to Jacksonville if a commodity rate had been available? A. That is correct.

Q. Now you made this sampling that you talked about, the 6 weeks, did you say? A. 6 weeks sampling.

Q. And was that for a six weeks period in 1964? A. I believe it was 6 weeks period of 1965.

Q. And yet you applied that to the 1964 revenue, is that right, sir? A. Yes, sir.

Q. And you did that by ratios that were developed from the 6 weeks sampling? A. Yes, sir.

Q. And you also with respect to that 6 weeks sample assumed that all of the 1964 traffic in the particular categories had originated at the same points, the same origin points, as was shown on the 6 weeks sample? A. That it would be representative of what occurred. We didn't have the same statistics, IBM statistics available for 1964 that we did for '65. It wasn't as refined.

Q. So you used the ratios from 1965 6 weeks studies and applied those to the entire 1964 traffic? A. Yes, sir.

Q. And if the ratio calls for one tenth of one percent [598] to originate at Louisville, that is what you showed on Exhibit 17? A. Yes, sir.

Q. As originating in let's say that is equalized territory — is that correct? A. Yes, sir.

MR. CARPENTER: That is all.

EXAMINER GREER: I am still confused as to the meaning of Exhibit 17. I thought I understood it from the previous testimony, but repeat for me again, you say New York area — does that mean that that is traffic from an inland or origin point favorable to New York?

THE WITNESS: Either favorable or moved over the port most favorable to the Port of New York, which it could have been a port that the inland rate might have been equalized to Baltimore as well as New York.

EXAMINER GREER: Yes. But still it is favorable to the northern area?

THE WITNESS: Yes, sir.

EXAMINER GREER: I hope that is correct, because I based a ruling on that assumption.

MR. CARPENTER: If the Examiner please —

THE WITNESS: With the exception that we show they are on the equalized area. We have automobiles on one which we checked out, and we had that as revenue which came out of the [599] southeast and moved to the Port of New York, and instead of making an extra column, we showed one reference.

EXAMINER GREER: The one thing this does not show, I think the Port of New York brought it out in their request for subpoena, is how much went to Jacksonville from origins rate favorable to New York. This does not show that, is that correct?

THE WITNESS: We know for a fact that our traffic in the Jacksonville area is localized traffic and —

EXAMINER GREER: Therefore you would have no traffic through Jacksonville.

THE WITNESS: 99 percent of it is out of the area favorable to the Port of Jacksonville.

EXAMINER GREER: For the purpose of clarifying this exhibit, we can state that there has been no traffic by your vessels through Jacksonville from areas rate favorable to New York?

THE WITNESS: Yes, sir.

MR. CARPENTER: Mr. Examiner, from the witness's testimony, it is perfectly plain that we no longer have comparable exhibits. Exhibit 17 and Exhibit 2 are not comparable. They were not made on a comparable manner at all, and in the light of that fact, I must regretfully withdraw my stipulation to provide the information or the additional information for Exhibit 2, because I do it — I will be utterly without any knowledge as to how much of the traffic that is shown here as [600] favorable New York area, actually should be in the equalized area, because as the witness has said, what he has done is to use merely the outlying of the equalized area on the so-called Tod Knott formula without ever checking the actually applicable rates. Exhibit 2 was made in an entirely different fashion as the witness Gabel has already stated. The rates actually applicable to the actual movements were

checked and the determination was made as to whether the actually applicable rates favored the equalized — were from equalized territory or actually favored Jacksonville or actually favored New York.

EXAMINER GREER: However, this formula would differentiate, would it not?

MR. CARPENTER: No, sir, it would not.

EXAMINER GREER: The formula does not differentiate between rates favorable to New York and —

THE WITNESS: The Tod Knott formula is so-called equalized area, and this is the area of rate level, and in all cases prescribed at an equalized basis over the north Atlantic and south Atlantic and Gulf ports —

EXAMINER GREER: And it has no relationship — it certainly must have a relationship to inland rates?

THE WITNESS: It has definite relationship. It is a rail rate principle.

MR. PRICE: If there is a specific commodity rate on one of these items that would be different from the Tod Knott [601] formula class rights that is not reflected here —

EXAMINER GREER: We are still talking about inland rates.

MR. CARPENTER: The rates were not actually checked out, and that is the point, and there are any number of commodity rates.

EXAMINER GREER: How much of a task is it to check those rates?

THE WITNESS: Fantastic.

* * *

Major-Moving Commodities of TMT and Sea-Land: U.S. Atlantic to Puerto Rico

TMT Code Number	Commodity Description	TMT, 1964 <i>both 1964</i> Directions	Sea-Land Code Number (1)	Sea-Land, Southbound, 1964	
		(\$000)		Jacksonville (\$000)	Total (\$000)
583	Iron and steel, manufactured	129	33121-33214	10	658
595	Machinery & machines, N.O.S. electric & non- electric (tractors, cranes, winches, hoists, welders, pumps, scales, roadmaking, woodworking, coin vending etc.)	461	35699	11	274
611	Vehicles, other than motor (bicycles, hand trucks, carts, trailer etc.)	55	37152-37154	-	5
613	Automobiles (passenger cars), and busses	1,035	37111	3	1,722
615	Vehicles, freight (trucks, jeeps)	58	37112	5	612
685	Electrical equipment & parts, N.O.S. (fans, lamps, radios, phonographs, transformers, TV sets, etc.)	162	36511-36516	-	135
705-0	Household goods and personal effects	137	39141-39143 & 41116-41214	15	290
707	Refrigerators, freezing appartus and parts	404	36320-36322 & 36324-36325	6	163
709	Laundry equipment, industrial, commercial or household	190	36331-36336	-	40
711	Stoves, ranges & parts, electric (heater & parts)	128	36311-36312	25	98
711-0	Stoves, ranges, & parts, nonelectric	74			
715	Furniture, N.O.S. (cabinets, mirrors, etc.)	349	25190-25198	9	419
715-0	Mattresses and box springs	83	20851-20821	1	63
745	Liquors, alcoholic, N.O.S.	99			
763	Food products, N.O.S. (canned or bottled, jam and jellies), not frozen	147	20321-20339	34	645
SUB-TOTALS		3,511	<i>ii mfgn comm</i>	119	5,124
TOTAL		4,608		1,461	22,897
Itemized (Sub-Total) as Percent of Total		76%		8%	22%

EXHIBIT 1

JA 131

EXHIBIT 1

Major-Moving Commodities of TMT and Sea-Land: U.S. Atlantic to Puerto Rico

TMT Code Number	Commodity Description	TMT, 1964 both Directions (\$000)	Sea-Land Code Number (1)	Sea-Land, Southbound, 1964	
				Jacksonville (\$000)	Total (\$000)
	Dry Goods, N.O.S.		23993	51	649
	Poultry, Frozen		20161	318	552
	Meat in Barrels, Boxes		20121	8	521
	Mail		41299	-	481
	-----		20421	27	364
	Bottles, Glass		32219	17	339
	Cigarettes		21111	-	332
	Cleansing or Facial, Paper		26215	6	330
	ITL, Ocean Freight, \$10 or Less		47111	-	320
	Cotton Piece Goods		22995	14	319
	Potatoes		01195	1	286
	Cargo, N.O.S. Non-hazardous		39999	1	277
	Tobacco Leaf		01193	27	217
	Eggs, in shells, TL		01522	69	233
	Boxes, Cardboard		26531	8	233
	Detergents, Powder		28413	2	259
	Sandals		31412	1	278
	Cans, Tin, KD		34118	3	224
	Plumbing Materials, N.O.S.		34319	-	260
	Electrical Appliances, Equipment		36999	3	255
	Yarn, Synthetic		22812	13	180
	Paint, N.O.S.		28519	10	168
	Freight, All Kinds, TL		44111	14	1,839
	Refrigerator Cargo		46221	10	167
	Ice Cream		20241	83	111
	Fruit, Fresh, not Frozen		01290	44	79
	Wrapping Kraft, and Other		26216	43	63
	Catalyst, Spent		28199	45	117

JA 132

Major-Moving Commodities of TMT and Sea-Land: U.S. Atlantic to Puerto Rico

TMT Code Number	Commodity Description	TMT, 1964 both Directions (\$000)	Sea-Land Code Number (1)	Sea-Land, Southbound, 1964	
				Jacksonville (\$000)	Total (\$000)
	Sash Doors		34411-34113	-	56
	Medicines, N.O.S.		28342	-	9
	Opium		28343	-	-
	Pharmaceuticals		28344	1	116
	Barrels, Empty		24413	-	95
	Total Itemized			938	14,853
	GRAND TOTAL			1,461	22,897
	Itemized as percent of total			64%	65%

JA 133

(1) Comparability with TMT classification subject to verification

TMT TRAILER FERRY INC.
(C. GORDON ANDERSON, TRUSTEE)

REVENUE BREAKDOWN OF TMT'S PRINCIPAL 1964 SOUTHBOUND COMMODITY MOVEMENTS
INTO ORIGIN TERRITORIES

(In Thousand Dollars)

M I D W E S T				S O U T H								O T H E R			
(Equal.)		(Balt.)		(Jax.)		(Miami)		(Equal.)		(Balt.)		(S.W.)		(P.C.)	
(Rev)	%	(Rev)	%	(Rev)	%	(Rev)	%	(Rev)	%	(Rev)	%	(Rev)	%	(Rev)	%
(CODE 583 - IRON AND STEEL, MANUFACTURED)															
8.2	6.7	18.8	15.3	28.1	23.0	67.4	55.0	---	--	---	--	---	--	---	--
(CODE 595 - MACHINERY, OTHER THAN ROAD MAKING AND TRACTORS)															
123.0	67.1	9.9	5.4	27.3	15.0	22.9	12.5	---	--	---	--	---	--	---	--
(CODE 611 - VEHICLES, OTHER THAN MOTOR)															
18.9	34.3	---	--	9.3	17.0	20.9	38.0	---	--	1.2	2.2	2.9	5.2	1.8	3.3
(CODE 615 - VEHICLES, FREIGHT TRUCKS)															
2.0	3.7	2.3	4.2	16.7	30.6	30.6	56.2	---	--	---	--	2.2	4.0	.7	1.3
(CODE 685 - ELECTRICAL EQUIPMENT AND PARTS)															
106.1	67.1	22.9	14.5	13.3	8.4	7.1	4.5	---	--	---	--	8.3	5.3	.3	.2
(CODE 705-0 - HOUSEHOLD GOODS AND PERSONAL EFFECTS)															
---	--	---	--	50.5	57.4	37.5	42.6	---	--	---	--	---	--	---	--
(CODE 707 - REFRIGERATORS AND FREEZING APPARATUS)															
282.6	69.9	116.2	28.8	5.2	1.3	---	--	---	--	---	--	---	--	---	--

EXHIBIT 2

JA 134

TMT TRAILER FERRY INC.
(C. GORDON ANDERSON, TRUSTEE)

REVENUE BREAKDOWN OF TMT'S PRINCIPAL 1964 SOUTHBOUND COMMODITY MOVEMENTS
INTO ORIGIN TERRITORIES

(In Thousand Dollars)

M I D W E S T				S O U T H								O T H E R			
(Equal.)		(Balt.)		(Jax.)		(Miami)(1)		(Equal.)		(Balt.)		(S.W.)		(P.C.)	
(Rev)	%	(Rev)	%	(Rev)	%	(Rev)	%	(Rev)	%	(Rev)	%	(Rev)	%	(Rev)	%
(CODE 709 - LAUNDRY EQUIPMENT)															
102.9	54.2	87.1	45.8	---	--	---	--	---	--	---	--	---	--	---	--
(CODES 711 and 711-0 - STOVES OR RANGES)															
74.1	36.7	64.9	32.1	63.0	31.2	---	--	---	--	---	--	---	--	---	--
(CODES 715 and 715-0 - FURNITURE, MATTRESSES AND BOX SPRINGS)															
3.5	.8	3.1	.7	312.7	72.7	11.4	2.7	10.1	2.3	74.3	17.3	---	--	---	--
				(2)14.9	3.5										
(CODE 763 - FOOD PRODUCTS, N.O.S.)															
6.5	5.8	---	--	92.1	81.3	14.6	12.9	---	--	---	--	---	--	---	--

JA 135

- (1) Tonnage moving via Miami.
 (2) Actual origin unknown.
 (Equal.) - Overland rail rates equalized to Jacksonville and Baltimore.
 (Balt.) - Overland rail rates favor Baltimore.
 (Jax.) - Overland rail rates favor Jacksonville.
 (Miami) - Overland rail rates favor Miami.
 (S.W.) - Originates in the Southwest.
 (P.C.) - Originates on Pacific Coast.

J.J.G.
10/12/65

EXHIBIT 5

Docket No. 1182
 Exhibit No. 5
 Part B
 Page 1 of 28

COMPARISON OF COMBINED RAIL AND OCEAN CHARGES
ON REPRESENTATIVE COMMODITIES MOVING VIA TMT AND SEA-LAND
FROM INLAND ORIGINS TO PUERTO RICO THROUGH THE PORTS OF JACKSONVILLE, BALTIMORE, AND ELIZABETH

	Jacksonville		Baltimore		Elizabeth	
	TMT	SEA-LAND	*TMT	SEA-LAND	*TMT	SEA-LAND
Refrigerators, Household From Chicago, Illinois						
All Rail to Port						
5/ 226 - 18M Balt.	403.74	403.74		406.80		406.80
5/ 226 - 18M Eliz.						
51/ 224.3 - 18M Jax. (211 + 13.3 handling)						
TMT Ocean to Puerto Rico						
43 cu. ft. @ 900 cu. ft.	(A) 387.00					
@ 1400 cu. ft.	(B) 602.00					
Total TMT Rail and Ocean	(A) 790.74					
	(B) 1005.74					
Sea-Land to Puerto Rico						
49 cu. ft. @ 900 cu. ft.		(C) 441.00		(C) 441.00		(C) 441.00
@ 1400 cu. ft.		(D) 686.00		(D) 686.00		(D) 686.00
Total Sea-Land Rail and Ocean		(C) 844.74		(C) 847.80		(C) 847.80
		(D) 1089.74		(D) 1092.80		(D) 1092.80
Differential at 900 cu. ft.	54.00		*57.06		*57.06	
at 1400 cu. ft.	84.00		*87.06		*87.06	

Docket No. 1182
 Exhibit No. _____
 Part B
 Page 2 of 28

Refrigerators, Household
 From Louisville, Kentucky

All Rail to Port

6/ 222 - 18M Eliz.

6/ 222 - 18M Balt.

52/ 195.3 - 18M Jax. (182 + 13.3 handling)

TMT Ocean to Puerto Rico

43 cu. ft. @ 900 cu. ft.

@ 1400 cu. ft.

Total TMT Rail and Ocean

Sea-Land to Puerto Rico

49 cu. ft. @ 900 cu. ft.

@ 1400 cu. ft.

Total Sea-Land Rail and Ocean

Differential at 900 cu. ft.

at 1400 cu. ft.

Jacksonville
TMT SEA-LAND

351.54

351.54

(A) 387.00

(B) 602.00

(A) 738.54

(B) 953.54

(C) 441.00

(D) 686.00

(C) 792.54

(D) 1037.54

54.00

84.00

Baltimore
*TMT SEA-LAND

399.60

*102.06

*132.06

(C) 441.00

(D) 686.00

(C) 840.60

(D) 1085.60

Elizabeth
*TMT SEA-LAND

399.60

*102.06

*132.06

(C) 441.00

(D) 686.00

(C) 840.60

(D) 1085.60

Machinery, NOS
 From Chicago, Illinois

All Rail to Port

7/ 168 - 24M Balt.

1/ 168 - 24M Eliz.

47/ 165 - 24M Jax.

TMT Ocean to Puerto Rico

50 cu. ft. @ 1050 cu. ft.

@ 1800 cu. ft.

Total TMT Rail and Ocean

Sea-Land to Puerto Rico

67 cu. ft. @ 1050 cu. ft.

@ 1800 cu. ft.

Total Sea-Land Rail and Ocean

Differential at 1050 cu. ft.

at 1800 cu. ft.

(A) 525.00

(B) 900.00

(A) 921.00

(B) 1296.00

(C) 703.50

(D) 1206.00

(C) 1099.50

(D) 1602.00

178.50

306.00

*185.70

*313.20

(C) 703.50

(D) 1206.00

(C) 1106.70

(D) 1609.20

*185.70

*313.20

(C) 703.50

(D) 1206.00

(C) 1106.70

(D) 1609.20

JA 139

Docket No. 1182

Exhibit No. _____

Part B

Page 3 of 28

Machinery, NOS

From Harrisburg, Pennsylvania

All Rail to Port

3/ 69½ - 24M Balt.

4/ 92 - 24M Eliz.

50/ 209.7 - 24M Jax. (201 + .087 wharfage and handling)

TMT Ocean to Puerto Rico

50 cu. ft. @ 1050 cu. ft.

@ 1800 cu. ft.

Total TMT Rail and Ocean

Sea-Land to Puerto Rico

67 cu. ft. @ 1050 cu. ft.

@ 1800 cu. ft.

Total Sea-Land Rail and Ocean

Differential at 1050 cu. ft.

at 1800 cu. ft.

Jacksonville

TMT

SEA-LAND

Baltimore

*TMT

SEA-LAND

Elizabeth

*TMT

SEA-LAND

503.28

503.28

166.80

220.80

(A) 525.00

(B) 900.00

(A) 1028.28

(B) 1403.28

(C) 703.50

(D) 1206.00

(C) 1206.78

(D) 1709.28

178.50

306.00

(C) 703.50

(D) 1206.00

(C) 870.30

(D) 1372.80

157.98

30.48

*23.52

(C) 703.50

(D) 1206.00

(C) 924.30

(D) 1426.80

103.98

Machinery, NOS

From Louisville, Kentucky

All Rail to Port

1/ 159 - 24M Balt.

1/ 159 - 24M Eliz.

48/ 140 - 24M Jax.

TMT Ocean to Puerto Rico

50 cu. ft. @ 1050 cu. ft.

@ 1800 cu. ft.

Total TMT Rail and Ocean

Sea-Land to Puerto Rico

67 cu. ft. @ 1050 cu. ft.

@ 1800 cu. ft.

Total Sea-Land Rail and Ocean

Differential at 1050 cu. ft.

at 1800 cu. ft.

336.00

336.00

381.60

381.60

(A) 525.00

(B) 900.00

(A) 861.00

(B) 1236.00

(C) 703.50

(D) 1206.00

(C) 1039.50

(D) 1542.00

178.50

306.00

*224.10

*351.60

(C) 703.50

(D) 1206.00

(C) 1085.10

(D) 1587.60

*224.10

*351.60

(C) 703.50

(D) 1206.00

(C) 1085.10

(D) 1587.60

Docket No. 1182
Exhibit No. _____
Part B
Page 4 of 28

Furniture

From Chicago, Illinois

All Rail to Port

11/ 203 - 22M Balt.

11/ 203 - 22M Eliz.

55/ 207 - 22M Jax.

TMT Ocean to Puerto Rico

42 cu. ft. @ 1260 cu. ft.

@ 1980 cu. ft.

Total TMT Rail and Ocean

Sea-Land to Puerto Rico

49 cu. ft. @ 1260 cu. ft.

@ 1980 cu. ft.

Total Sea-Land Rail and Ocean

Differential at 1260 cu. ft.

at 1980 cu. ft.

Jacksonville	
TMT	SEA-LAND

Baltimore	
*TMT	SEA-LAND

Elizabeth	
*TMT	SEA-LAND

455.40

455.40

446.60

446.60

(A) 529.20

(B) 831.60

(A) 984.60

(B) 1287.00

(C) 617.40

(D) 970.20

(C) 1072.80

(D) 1425.60

88.20

138.60

*79.40

*129.80

(C) 617.40

(D) 970.20

(C) 1064.00

(D) 1416.80

*79.40

*129.80

(C) 617.40

(D) 970.20

(C) 1064.00

(D) 1416.80

Furniture

From Louisville, Kentucky

All Rail to Port

11/ 191 - 22M Balt.

11/ 191 - 22M Eliz.

55/ 168 - 22M Jax.

TMT Ocean to Puerto Rico

42 cu. ft. @ 1260 cu. ft.

@ 1980 cu. ft.

Total TMT Rail and Ocean

Sea-Land to Puerto Rico

49 cu. ft. @ 1260 cu. ft.

@ 1980 cu. ft.

Total Sea-Land Rail and Ocean

Differential at 1260 cu. ft.

at 1980 cu. ft.

369.60

369.60

420.20

420.20

(A) 529.20

(B) 831.60

(A) 898.80

(B) 1201.20

(C) 617.40

(D) 970.20

(C) 987.00

(D) 1339.80

88.20

138.60

*138.80

*189.20

(C) 617.40

(D) 970.20

(C) 1037.60

(D) 1390.40

*138.80

*189.20

(C) 617.40

(D) 970.20

(C) 1037.60

(D) 1390.40

JA 141

Docket No. 1182

Exhibit No. _____

Part B

Page 5 of 28

	Jacksonville		Baltimore		Elizabeth	
	TMT	SEA-LAND	*TMT	SEA-LAND	*TMT	SEA-LAND
Furniture						
From High Point, North Carolina						
All Rail to Port						
10/ 97 - 22M Balt.		272.14				
54/ 123.7 - 22M Jax: (115 + 8.7 wharfage and handling)		272.14		213.40		
TMT Ocean to Puerto Rico						
42 cu. ft. @ 1260 cu. ft.	(A) 529.20					
@ 1980 cu. ft.	(B) 831.60					
Total TMT Rail and Ocean	(A) 801.34					
	(B) 1103.74					
Sea-Land to Puerto Rico						
49 cu. ft. @ 1260 cu. ft.		(C) 617.40		(C) 617.40		
@ 1980 cu. ft.		(D) 970.20		(D) 970.20		
Total Sea-Land Rail and Ocean		(C) 889.54		(C) 830.80		
		(D) 1242.34		(D) 1183.60		
Differential at 1260 cu. ft.	88.20		*19.34			
at 1980 cu. ft.	138.60		*69.74			
Furniture						
From York, Pennsylvania						
All Rail to Port						
12/ 76 - 22M Balt.		421.74				
13/ 110 - 22M Eliz.		421.74		167.20		242.00
56/ 191.7 - 22M Jax. (183 + 8.7 wharfage and handling)						
TMT Ocean to Puerto Rico						
42 cu. ft. @ 1260 cu. ft.	(A) 529.20					
@ 1980 cu. ft.	(B) 831.60					
Total TMT Rail and Ocean	(A) 950.94					
	(B) 1253.34					
Sea-Land to Puerto Rico						
49 cu. ft. @ 1260 cu. ft.		(C) 617.40		(C) 617.40		(C) 617.40
@ 1980 cu. ft.		(D) 970.20		(D) 970.20		(D) 970.20
Total Sea-Land Rail and Ocean		(C) 1039.14		(C) 784.60		(C) 859.40
		(D) 1391.94		(D) 1137.40		(D) 1212.20
Differential at 1260 cu. ft.	88.20			166.34		91.54
at 1980 cu. ft.	138.60			115.94		41.14

Docket No. -1182
 Exhibit No. _____
 Part B
 Page 6 of 28

	Jacksonville		Baltimore		Elizabeth	
	TMT	SEA-LAND	*TMT	SEA-LAND	*TMT	SEA-LAND
Stoves or Ranges, Electric						
From Chicago, Illinois						
All Rail to Port						
14/ 149 - 24M Balt.	357.60	357.60		357.60		357.60
14/ 149 - 24M Eliz.						
57/ 149 - 24M Jax.						
TMT Ocean to Puerto Rico						
\$690 - trailer	690.00					
Total TMT Rail and Ocean	1047.60					
Sea-Land to Puerto Rico						
\$726 - trailer from Jax.		726.00				
62 cu. ft. @ 1650 cu. ft. from other North Atlantic Ports				1023.00		1023.00
Total Sea-Land Rail and Ocean		1083.60		1380.60		1380.60
Differential	36.00		*333.00		*333.00	
Stoves or Ranges, Electric						
From Cleveland, Ohio						
All Rail to Port						
14/ 110 - 24M Balt.	460.08	460.08		264.00		264.00
14/ 110 - 24M Eliz.						
61/ 191.7 - 24M Jax. (183 + 8.7 wharfage and handling)						
TMT Ocean to Puerto Rico						
\$690 - trailer	690.00					
Total TMT Rail and Ocean	1150.08					
Sea-Land to Puerto Rico						
\$726 - trailer from Jax.		726.00				
62 cu. ft. @ 1650 cu. ft. from other North Atlantic Ports				1023.00		1023.00
Total Sea-Land Rail and Ocean		1186.08		1287.00		1287.00
Differential	36.00			136.92		136.92

Docket No. 1182

Exhibit No. _____

Part B

Page 7 of 28

	Jacksonville		Baltimore		Elizabeth	
	TMT	SEA-LAND	*TMT	SEA-LAND	*TMT	SEA-LAND
Stoves or Ranges, Electric						
From Reading, Pennsylvania						
All Rail to Port						
15/ 69½ - 24M Balt.	421.68	421.68				
16/ 72½ - 24M Eliz.				166.80		174.00
60/ 175.7 - 24M Jax. (167 + 8.7 wharfage and handling)						
TMT Ocean to Puerto Rico						
\$690 - trailer	690.00					
Total TMT Rail and Ocean	1111.68					
Sea-Land to Puerto Rico						
\$726 - trailer from Jax.		726.00				
62 cu. ft. @ 1650 cu. ft. from other North Atlantic Ports				1023.00		1023.00
Total Sea-Land Rail and Ocean		1147.68		1189.80		1197.00
Differential	36.00			78.12		85.32
Stoves or Ranges, Gasoline or Oil						
From Chicago, Illinois						
All Rail to Port						
18/ 149 - 24M Balt.	357.60	357.60				
18/ 149 - 24M Eliz.				357.60		357.60
61/ 149 - 24M Jax.						
TMT Ocean to Puerto Rico						
\$690 - trailer	690.00					
Total TMT Rail and Ocean	1047.60					
Sea-Land to Puerto Rico						
\$726 - trailer from Jax.		726.00				
57 cu. ft. @ 1650 cu. ft. from other North Atlantic Ports				940.50		940.50
Total Sea-Land Rail and Ocean		1083.60		1298.10		1298.10
Differential	36.00		*250.50		*250.50	

Docket No. 1182

Exhibit No. _____

Part B

Page 8 of 28

	Jacksonville		Baltimore		Elizabeth	
	TMT	SEA-LAND	*TMT	SEA-LAND	*TMT	SEA-LAND
Stoves or Ranges, Gasoline or Oil From Mansfield, Ohio						
All Rail to Port						
18/ 113 - 24M Balt.	474.48	474.48		271.20		271.20
18/ 113 - 24M Eliz.						
62/ 197.7 - 24M Jax. (189 + 8.7 wharfage and handling)						
TMT Ocean to Puerto Rico						
\$690 - trailer	690.00					
Total TMT Rail and Ocean	1164.48					
Sea-Land to Puerto Rico						
\$726 - trailer from Jax.		726.00				
57 cu. ft. @ 1650 cu. ft. from other North Atlantic Ports						
Total Sea-Land Rail and Ocean		1200.48		940.50		940.50
Differential	36.00			1211.70		1211.70
			47.22	47.22	47.22	47.22
Stoves or Ranges, Gasoline or Oil From Cleveland, Tennessee						
All Rail to Port						
21/ 120 - 24M Balt.	294.48	294.48		288.00		336.00
22/ 140 - 24M Eliz.						
63/ 122.7 - 24M Jax. (114 + 8.7 wharfage and handling)						
TMT Ocean to Puerto Rico						
\$690 - trailer	690.00					
Total TMT Rail and Ocean	984.48					
Sea-Land to Puerto Rico						
\$726 - trailer from Jax.		726.00				
57 cu. ft. @ 1650 cu. ft. from other North Atlantic Ports						
Total Sea-Land Rail and Ocean		1020.48		940.50		940.50
Differential	36.00		*244.02	1228.50	*292.02	1276.50

	Jacksonville		Baltimore		Elizabeth	
	TMT	SEA-LAND	*TMT	SEA-LAND	*TMT	SEA-LAND
Stoves or Ranges, Coal or Wood From Chicago, Illinois						
All Rail to Port						
103/ 149 - 24M Balt.	357.60	357.60		357.60		357.60
103/ 149 - 24M Eliz.						
64/ 149 - 24M Jax.						
TMT Ocean to Puerto Rico						
\$690 - trailer	690.00					
Total TMT Rail and Ocean	1047.60					
Sea-Land to Puerto Rico						
\$726 - trailer from Jax.		726.00				
57 cu. ft. @ 1650 cu. ft. from other North Atlantic Ports				940.50		940.50
Total Sea-Land Rail and Ocean		1083.60		1298.10		1298.10
Differential	36.00		*250.50		*250.50	
Stoves or Ranges, Coal or Wood From Cleveland, Ohio						
All Rail to Port						
103/ 110 - 24M Balt.	408.00	408.00		264.00		264.00
103/ 110 - 24M Eliz.						
65/ 170 - 24M Jax.						
TMT Ocean to Puerto Rico						
\$690 - trailer	690.00					
Total TMT Rail and Ocean	1098.00					
Sea-Land to Puerto Rico						
\$726 - trailer from Jax.		726.00				
57 cu. ft. @ 1650 cu. ft. from other North Atlantic Ports				940.50		940.50
Total Sea-Land Rail and Ocean		1134.00		1204.50		1204.50
Differential	36.00		106.50	106.50	106.50	106.50

Docket No. 1182
 Exhibit No. _____
 Part B
 Page 10 of 28

	Jacksonville		Baltimore		Elizabeth	
	TMT	SEA-LAND	*TMT	SEA-LAND	*TMT	SEA-LAND
Stoves or Ranges, Coal or Wood From Reading, Pennsylvania						
All Rail to Port						
104/ 69½ - 24M Balt.	457.68	457.68		166.80		174.00
105/ 72½ - 24M Eliz.						
65/ 190.7 - 24M Jax. (182 + 8.7 wharfage and handling)						
A/						
TMT Ocean to Puerto Rico						
\$690 - trailer	690.00					
Total TMT Rail and Ocean	1147.68					
Sea-Land to Puerto Rico						
\$726 - trailer from Jax.		726.00				
57 cu. ft. @ 1650 cu. ft. from other North Atlantic Ports				940.50		940.50
Total Sea-Land Rail and Ocean		1183.68		1107.30		1114.50
Differential	36.00			40.38		33.18

	Jacksonville		Baltimore		Elizabeth	
	TMT	SEA-LAND	*TMT	SEA-LAND	*TMT	SEA-LAND
Household Washing Machines From Chicago, Illinois						
All Rail to Port						
23/ 191-22M Balt.	404.80	404.80		420.20		420.20
23/ 191-22M Eliz.						
67/ 184-22M Jax.						
TMT Ocean to Puerto Rico						
\$690.00/Trailer	690.00					
Total TMT Rail & Ocean	1094.80					
Sea-Land to Puerto Rico						
\$726.00/Trailer from Jax.		726.00		1023.00		1023.00
62 cu. ft. other N.A. ports @ 1650 cu. ft.						
Total Sea-Land Rail & Ocean		1130.80		1443.20		1443.20
Differential	36.00		*348.40		348.40	
From Mansfield, Ohio						
All Rail to Port						
24/ 149-22M Balt.						
24/ 149-22M Eliz.	478.94	478.94		327.80		327.80
68/ 217.7 (209 + 8.7 Handl. & Wharfage) Jax.						
TMT Ocean to Puerto Rico						
\$690.00/Trailer	690.00					
Total TMT Rail & Ocean	1168.94					
Sea-Land to Puerto Rico						
\$726.00/Trailer from Jax.		726.00		1023.00		1023.00
62 cu. ft. other N. A. ports @ 1650 cu.ft.						
Total Sea-Land Rail & Ocean		1204.94		1350.80		1350.80
Differential	36.00		181.86	181.86	181.86	181.86

	Jacksonville		Baltimore		Elizabeth	
	TMT	SEA-LAND	*TMT	SEA-LAND	*TMT	SEA-LAND
Household Washing Machines						
From Louisville, Kentucky						
All Rail to Port						
24/ 180-22M Balt.						
24/ 180-22M Eliz.	341.00	341.00	-	396.00		396.00
67/ 155-22M Jax.						
TMT Ocean to Puerto Rico						
\$690.00/Trailer	690.00					
Total TMT Rail & Ocean	1031.00					
Sea-Land to Puerto Rico						
\$726.00/Trailer from Jax.		726.00		1023.00		1023.00
62 cu. ft. other N. A. ports @ 1650 cu. ft.						
Total Sea-Land Rail & Ocean		1067.00		1419.00		1419.00
Differential	36.00		*388.00		*388.00	
Air Coolers, Heaters, etc.						
From Chicago, Illinois						
All Rail to Port						
26/ 168-24M Balt.						
26/ 168-24M Eliz.	403.20	403.20		403.20		403.20
69/ 168-24M Jax.						
TMT Ocean to Puerto Rico						
54 cu. ft. @ 1440 cu. ft.	A/ 777.60					
@ 1760 cu. ft.	B/ 950.40					
Total TMT Rail & Ocean	A/ 1180.80					
	B/ 1353.60					
Sea-Land to Puerto Rico						
62 cu. ft. @ 1440 cu. ft.		C/ 892.80		C/ 892.80		C/ 892.80
@ 1760 cu. ft.		D/ 1091.20		D/ 1091.20		D/ 1091.20
Total Sea-Land Rail & Ocean		C/ 1296.00		C/ 1296.00		C/ 1296.00
		D/ 1494.40		D/ 1494.40		D/ 1494.40

	Jacksonville		Baltimore		Elizabeth	
	TMT	SEA-LAND	*TMT	SEA-LAND	*TMT	SEA-LAND
Air Coolers, Heaters, etc. From Chicago, Illinois						
Differential						
At 1440 cu. ft.		115.20	*115.20		*115.20	
At 1760 cu. ft.		140.80	*140.80		*140.80	
Air Coolers, Heaters, etc. From Cleveland, Ohio						
All Rail to Port						
26/ 124-24M Balt.						
26/ 124-24M Eliz.						
70/ 207.7 (199 + 8.7 Handl. & Wharfage) 20M Jax.		415.40		297.60		297.60
TMT Ocean to Puerto Rico						
54 cu. ft. @ 1440 cu. ft.	A/	777.60				
@ 1760 cu. ft.	B/	950.40				
Total TMT Rail & Ocean	A/	1193.00				
	B/	1365.80				
Sea-Land to Puerto Rico						
62 cu. ft. @ 1440 cu. ft.	C/	892.80		892.80		892.80
@ 1760 cu. ft.	D/	1091.20		1091.20		1091.20
Total Sea-Land Rail & Ocean	C/	1308.20		1190.40		1190.40
	D/	1506.60		1388.80		1388.80
Differential						
At 1440 cu. ft.		115.20				
At 1760 cu. ft.		140.80	* 23.00	2.60	* 23.00	2.60
Air Coolers, Heaters, etc. From Atlanta, Georgia						
All Rail to Port						
71/ 94.7 (86 + 8.7 Handl. & Wharfage) 24M Jax.		227.28		None		None
TMT Ocean to Puerto Rico						
54 cu. ft. @ 1440 cu. ft.	A/	777.60				
@ 1760 cu. ft.	B/	950.40				

JA 150

Docket No. 1182

Exhibit No.

Part B

Page 14 of 28

	Jacksonville		Baltimore		Elizabeth	
	TMT	SEA-LAND	*TMT	SEA-LAND	*TMT	SEA-LAND
Air Coolers, Heaters, etc. From Atlanta, Georgia						
Total TMT Rail & Ocean	A/ 1004.88 B/ 1177.68					
Sea-Land to Puerto Rico 62 cu. ft. @ 1440 cu. ft. @ 1760 cu. ft.						
Total Sea-Land Rail & Ocean		C/ 892.80 D/ 1091.20 C/ 1120.08 D/ 1318.48				
Differential						
At 1440 cu. ft.		115.20				
At 1760 cu. ft.		140.80				
Television Sets From Chicago, Illinois						
All Rail to Port						
27/ 284-18M Balt.		511.20		511.20		511.20
27/ 284-18M Eliz.						
72/ 284-18M Jax.						
TMT Ocean to Puerto Rico 54 cu. ft. @ 1260 cu. ft. @ 1680 cu. ft.						
Total TMT Rail & Ocean	A/ 680.40 B/ 907.20 A/ 1191.60 B/ 1418.40					
Sea-Land to Puerto Rico 62 cu. ft. @ 1260 cu. ft. @ 1680 cu. ft.						
Total Sea-Land Rail & Ocean		C/ 781.20 D/ 1041.60 C/ 1292.40 D/ 1552.80		C/ 781.20 D/ 1041.60 C/ 1292.40 D/ 1552.80		C/ 781.20 D/ 1041.60 C/ 1292.40 D/ 1552.80
Differential						
At 1260 cu. ft.		100.80		*100.80		*100.80
At 1680 cu. ft.		134.40		*134.40		*134.40

Docket No. 1182

Exhibit No.

Part B

Page 15 of 28

Television Sets

From Atlanta, Georgia

All Rail to Port

74/ 165.7 (157 + 8.7 Handl. & Wharfage)
18M Jax.

TMT Ocean to Puerto Rico

54 cu. ft. @ 1260 cu. ft.
@ 1680

Total TMT Rail & Ocean

Sea-Land to Puerto Rico

62 cu. ft. @ 1260 cu. ft.
@ 1680 cu. ft.

Total Sea-Land Rail & Ocean

Differential

At 1260 cu. ft.

At 1680 cu. ft.

Bicycles

From Chicago, Illinois

All Rail to Port

34/ 284-15M Balt.

34/ 284-15M Eliz.

TMT Ocean to Puerto Rico

42 cu. ft. @ 1620 cu. ft.
@ 1980 cu. ft.

Total TMT Rail & Ocean

Jacksonville	
TMT	SEA-LAND

Baltimore	
*TMT	SEA-LAND

Elizabeth	
*TMT	SEA-LAND

298.26	298.26		
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None

None

A/	680.40
B/	907.20
A/	978.66
B/	1205.46

C/	781.20
D/	1041.60
C/	1079.46
D/	1339.86

100.80
134.40

426.00	426.00		
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426.00

426.00

A/	680.40
B/	831.60
A/	1106.40
B/	1257.60

Docket 1182

Exhibit No.

Part B

Page 16 of 28

	Jacksonville		Baltimore		Elizabeth	
	TMT	SEA-LAND	*TMT	SEA-LAND	*TMT	SEA-LAND
Bicycles						
From Chicago, Illinois						
Sea-Land to Puerto Rico						
57 cu. ft. @ 1620 cu. ft.		C/ 923.40		C/ 923.40		C/ 923.40
@ 1980 cu. ft.		D/ 1128.60		D/ 1128.60		D/ 1128.60
Total Sea-Land Rail & Ocean		C/ 1349.40		C/ 1349.40		C/ 1349.40
		D/ 1554.60		D/ 1554.60		D/ 1554.60
Differential						
At 1620 cu. ft.	243.00		*243.00		*243.00	
At 1980 cu. ft.	297.00		*297.00		*297.00	
Drugs, Medicines, and Toilet Preparations, NOIBN						
From Chicago, Illinois						
All Rail to Port						
36/ 115-1/4-40M Balt.						
36/ 115-1/4-40M Eliz.	454.60	454.60		462.00		462.00
82/ 113.65 (106 + 7.65 Handl. & Wharfage) 40M Jax.						
Released to \$.50 per pound						
TMT Ocean to Puerto Rico						
60 cu. ft. @ 1000 cu. ft.	600.00					
Total TMT Rail & Ocean	1054.60					
Sea-Land to Puerto Rico						
70 cu. ft. @ 1000 cu. ft.		700.00		700.00		700.00
Total Sea-Land Rail & Ocean		1154.60		1162.00		1162.00
Differential						
	100.00		*107.40		*107.40	
Drugs, Medicines, and Toilet Preparations, NOIBN						
From Atlanta, Georgia						
All Rail to Port						
84/ 68.2 (59.5 + 8.7 Handl. & Wharfage) 40M Jax.	272.80	272.80		None		None
Released to \$.50 per pound						

	Jacksonville		Baltimore		Elizabeth	
	TMT	SEA-LAND	*TMT	SEA-LAND	*TMT	SEA-LAND
Drugs, Medicines, and Toilet Preparations, NOIBN From Atlanta, Georgia						
TMT Ocean to Puerto Rico 60 cu. ft. @ 1000 cu. ft.	600.00					
Total TMT Rail & Ocean	872.80					
Sea-Land to Puerto Rico 70 cu. ft. @ 1000 cu. ft.		700.00				
Total Sea-Land Rail & Ocean		972.80				
Differential	100.00					
Iron or Steel Wire, Plain From Birmingham, Alabama						
All Rail to Port 87/ 64.6 (58.5 + 6.1 Handl. & Wharfage) cwt 40M Jax.	258.40	258.40				
TMT Ocean to Puerto Rico 100 cwt. 40M	400.00					
Total TMT Rail & Ocean	658.40					
Sea-Land to Puerto Rico 100 cwt. 40M		400.00				
Total Sea-Land Rail & Ocean		658.40				
Differential	—	—				
Iron or Steel Wire, Plain From Chicago, Illinois						
All Rail to Port 38/ 77-50M Balt.						
38/ 77-50M Eliz.	395.00	395.00				
85/ 79-50M Jax.						
			385.00		385.00	

	Jacksonville		Baltimore		Elizabeth	
	TMT	SEA-LAND	*TMT	SEA-LAND	*TMT	SEA-LAND
Iron or Steel Wire, Plain						
From Chicago, Illinois						
TMT Ocean to Puerto Rico						
100 cwt. 40M	400.00					
Total TMT Rail & Ocean	795.00					
Sea-Land to Puerto Rico						
100 cwt. 40M		400.00		400.00		400.00
Total Sea-Land Rail & Ocean		795.00		785.00		785.00
Differential				10.00		10.00
Tin Plate						
From Wheeling, West Virginia						
All Rail to Port						
40/ 48-1/2-50M Balt.						
40/ 48-1/2-50M Eliz.	468.00	468.00		242.50		242.50
86/ 117-40M Jax.						
TMT Ocean to Puerto Rico						
100 cwt. 40M	400.00					
Total TMT Ocean & Rail	868.00					
Sea-Land to Puerto Rico						
98 cwt. 40M		392.00		392.00		392.00
Total Sea-Land Rail & Ocean		860.00		634.50		634.50
Differential		8.00		233.50		233.50
Toilet Paper, Paper Napkins						
From Rockingham, North Carolina						
All Rail to Port						
44/ 87-36M Balt. (2 trlr.)	234.72	234.72		313.20		None

	Jacksonville		Baltimore		Elizabeth	
	TMT	SEA-LAND	*TMT	SEA-LAND	*TMT	SEA-LAND
Toilet Paper, Paper Napkins						
From Rockingham, North Carolina						
All Rail to Port						
89/ 65.2 (56.5 + 8.7 Handl. & Wharfage)						
36M Jax. (2 trlr.)						
TMT Ocean to Puerto Rico						
39 cu. ft. @ 3600 cu. ft. (2 trlr)	1404.00					
Total TMT Rail & Ocean (2 trlr)	1638.72					
Sea-Land to Puerto Rico						
244 cwt. 35M (2 trlr)		854.00		854.00		
Total Sea-Land Rail & Ocean (2 trlr)		1088.72		1167.20		
Differential (2 trlr)		550.00		471.52		
Toilet Paper, Paper Napkins						
From Jacksonville, Florida						
All Rail to Port						
89/ 29.2 (20.5 + 8.7 Handl. & Wharfage)						
36M Jax. (2 trlr)	105.12	105.12		None		None
TMT Ocean to Puerto Rico						
39 cu. ft. @ 3600 cu. ft. (2 trlr)	1404.00					
Total TMT Rail & Ocean (2 trlr)	1509.12					
Sea-Land to Puerto Rico						
244 cwt. 35M (2 trlr)		854.00				
Total Sea-Land Rail & Ocean (2 trlr)		959.12				
Differential (2 trlr)		550.00				
Bottles						
Tampa, Florida						
All Rail to Port						
90/ 55.2 (46.5 + 8.7 Handl. & Wharfage) 30M Jax.	165.60	165.60				

	Jacksonville		Baltimore		Elizabeth	
	TMT	SEA-LAND	*TMT	SEA-LAND	*TMT	SEA-LAND
Bottles						
Tampa, Florida						
TMT Ocean to Puerto Rico						
28 cu. ft. @ 1800 cu. ft.	504.00					
Total TMT Rail & Ocean	669.60					
Sea-Land to Puerto Rico						
135 cwt. 30M		405.00				
Total Sea-Land Ocean & Rail		570.60				
Differential		99.00				
Bottles						
From Atlanta, Georgia						
All Rail to Port						
90/ 70.2 (61.5 + 8.7 Handl. & Wharfage) 30M Jax.	210.60	210.60				
TMT Ocean to Puerto Rico						
28 cu. ft. @ 1800 cu. ft.	504.00					
Total TMT Rail & Ocean	714.60					
Sea-Land to Puerto Rico						
135 cwt. 30M		405.00				
Total Sea-Land Ocean & Rail		615.60				
Differential		99.00				
Paper Boxes, Cartons						
From Jacksonville, Florida						
All Rail to Port						
91/ 29.2 (20.5 + 8.7 Handl. & Wharfage) cwt						
36M Jax.	105.12	105.12				
TMT Ocean to Puerto Rico						
42 cu. ft. @ 1440 cu. ft.	A/ 604.80					
@ 1760 cu. ft.	B/ 739.20					

	Jacksonville		Baltimore		Elizabeth	
	TMT	SEA-LAND	*TMT	SEA-LAND	*TMT	SEA-LAND
Paper Boxes, Cartons From Jacksonville, Florida						
Total TMT Rail & Ocean	<u>A/</u>	709.92				
	<u>B/</u>	844.32				
-- Sea-Land to Puerto Rico						
37 cu. ft. @ 1440 cu. ft.		<u>C/</u>	532.80			
@ 1760 cu. ft.		<u>D/</u>	651.20			
Total Sea-Land Rail & Ocean		<u>C/</u>	637.92			
		<u>D/</u>	756.32			
Differential						
At 1440 cu. ft.			72.00			
At 1760 cu. ft.			88.00			
Paper Boxes, Cartons From Atlanta, Georgia						
All Rail to Port						
91/ 60.2 (51.5 + 8.7 Handl. & Wharfage) 36M Jax.		216.72		216.72		
TMT Ocean to Puerto Rico						
42 cu. ft. @ 1440 cu. ft.	<u>A/</u>	604.80				
@ 1760 cu. ft.	<u>B/</u>	739.20				
Total TMT Rail & Ocean	<u>A/</u>	821.52				
	<u>B/</u>	955.92				
Sea-Land to Puerto Rico						
37 cu. ft. @ 1440 cu. ft.		<u>C/</u>	532.80			
@ 1760 cu. ft.		<u>D/</u>	651.20			
Total Sea-Land Rail & Ocean		<u>C/</u>	749.52			
		<u>D/</u>	867.92			
Differential						
At 1440 cu. ft.		<u>C/</u>	72.00			
At 1760 cu. ft.		<u>D/</u>	88.00			

Docket No. 1182

Exhibit No.

Part B

Page 22 of 28

	Jacksonville		Baltimore		Elizabeth	
	TMT	SEA-LAND	*TMT	SEA-LAND	*TMT	SEA-LAND
Cylinders, empty gas, steel, new From Atlanta, Georgia						
All Rail to Port						
88/ 100 36M		360.00		360.00		
TMT Ocean to Puerto Rico						
33 cu. ft. @ 1800 cu. ft.	A/	594.00				
@ 1980 cu. ft.	B/	653.40				
Total TMT Rail & Ocean	A/	954.00				
	B/	1013.40				
Sea-Land to Puerto Rico						
36 cu. ft. @ 1800 cu. ft.			C/	648.00		
@ 1980 cu. ft.			D/	712.80		
Total Rail & Ocean			C/	1008.00		
			D/	1072.80		
Differential						
At 1800 cu. ft.		54.00				
At 1980 cu. ft.		59.40				
Wrapping Paper, Paper Bags From Jacksonville, Florida						
All Rail to Port						
91/ 29.2 (20.5 + 8.7 Handl. & Wharfage) 36M Jax.		105.12		105.12		
TMT Ocean to Puerto Rico						
39 cu. ft. @ 1260 cu. ft.	A/	491.40				
@ 1540 cu. ft.	B/	600.60				
Total TMT Rail & Ocean	A/	596.52				
	B/	705.72				
Sea-Land to Puerto Rico						
100 cwt @ 38M			C/	380.00		
@ 40M			D/	400.00		
Total Sea-Land Rail & Ocean			C/	485.12		
			D/	505.12		

	Jacksonville		Baltimore		Elizabeth	
	TMT	SEA-LAND	*TMT	SEA-LAND	*TMT	SEA-LAND
Wrapping Paper, Paper Bags From Jacksonville, Florida						
Differential						
At 1260 cu. ft. & 38M		111.40				
At 1540 cu. ft. & 40M		200.60				
Plumbing Material, China or Earthenware From Cincinnati, Ohio						
All Rail to Port						
42/ 159-30M Balt.						
42/ 159-30M Eliz.	477.00	477.00		477.00		477.00
TMT Ocean to Puerto Rico						
48 cu. ft. @ 1170 cu. ft.	A/ 561.60					
@ 1690 cu. ft.	B/ 811.20					
Total TMT Rail & Ocean	A/ 1038.60					
	B/ 1288.20					
Sea-Land to Puerto Rico						
58 cu. ft. @ 1170 cu. ft.	C/ 678.60		C/ 678.60		C/ 678.60	
@ 1690 cu. ft.	D/ 980.20		D/ 980.20		D/ 980.20	
Total Sea-Land Rail & Ocean	C/ 1155.60		C/ 1155.60		C/ 1155.60	
	D/ 1457.20		D/ 1457.20		D/ 1457.20	
Differential						
At 1170 cu. ft.	117.00		*117.00		*117.00	
At 1690 cu. ft.	169.00		*169.00		*169.00	
Plumbing Material, China or Earthenware From Detroit, Michigan						
All Rail to Port						
42/ 160-30 Balt.	598.50	598.50		480.00		480.00
42/ 160-30 Eliz.						
94/ 202.7-22M, 190.7 Excess Jax. (194.0 + 8.7 Handl. & Wfg.) (182 + 8.7 Handl. & Wfg. Excess)						

JA 160

Docket No.

Exhibit No.

Part B

Page 24 of 28

	Jacksonville		Baltimore		Elizabeth	
	TMT	SEA-LAND	*TMT	SEA-LAND	*TMT	SEA-LAND
Plumbing Material, China or Earthenware						
From Detroit, Michigan						
TMT Ocean to Puerto Rico						
48 cu. ft. @ 1170 cu. ft.	A/	561.60				
@ 1690 cu. ft.	B/	811.20				
Total TMT Rail & Ocean	A/	1160.10				
	B/	1409.70				
Sea-Land to Puerto Rico						
58 cu. ft. @ 1170 cu. ft.		C/ 678.60		C/ 678.60		C/ 678.60
@ 1690 cu. ft.		D/ 980.20		D/ 980.20		D/ 980.20
Total Sea-Land Rail & Ocean		C/ 1277.10		C/ 1167.60		C/ 1167.60
		D/ 1578.70		D/ 1460.20		D/ 1460.20
Differential						
At 1170 cu. ft.		117.00	* 7.50		* 7.50	
At 1690 cu. ft.		169.00	50.50		50.50	
Yarn, Synthetic						
From Columbia, South Carolina						
All Rail to Port						
44/ 84-24M Balt.		151.68		151.68		201.60
95/ 63.2 (54.5 + 8.7 Handl. & Wharfage) 24M Jax.						
TMT Ocean to Puerto Rico						
35 cu. ft. @ 1280 cu. ft.	A/	448.00				
@ 1980 cu. ft.	B/	693.00				
Total TMT Rail & Ocean	A/	599.68				
	B/	844.68				
Sea-Land to Puerto Rico						
37 cu. ft. @ 1280 cu. ft.		C/ 473.60		C/ 473.60		
@ 1980 cu. ft.		D/ 732.60		D/ 732.60		
Total Sea-Land Rail & Ocean		C/ 625.28		C/ 675.20		
		D/ 884.28		D/ 934.20		

Docket No. 1182

Exhibit No.

Part B

Page 25 of 28

	Jacksonville		Baltimore		Elizabeth	
	TMT	SEA-LAND	*TMT	SEA-LAND	*TMT	SEA-LAND
Yarn, Synthetic						
From Columbia, South Carolina						
Differential						
At 1280 cu. ft.		25.60	* 75.52			
At 1980 cu. ft.		39.60	* 89.52			
Cigarettes						
From Durham, North Carolina						
All Rail to Port						
97/ 106 - 36M Balt.		409.32		409.32		381.60
106/ 113.7 (105 + 8.7 Handl. & Wharfage) 36M Jax.						
TMT Ocean to Puerto Rico						
45 cu. ft. @ 1620 cu. ft.	A/	729.00				
@ 1980 cu. ft.	B/	891.00				
Total TMT Rail & Ocean	A/	1138.32				
	B/	1300.32				
Sea-Land to Puerto Rico						
57 cu. ft. @ 1620 cu. ft.		C/ 923.40		C/ 923.40		
@ 1980 cu. ft.		D/ 1128.60		D/ 1128.60		
Total Sea-Land Rail & Ocean		C/ 1332.72		C/ 1305.00		
		D/ 1537.92		D/ 1510.20		
Differential						
At 1620 cu. ft.		194.40	*166.68			
At 1980 cu. ft.		237.60	*209.88			

Docket No. 1182
 Exhibit No.
 Part B
 Page 26 of 28

			Jacksonville		Baltimore		Elizabeth	
			TMT	SEA-LAND	*TMT	SEA-LAND	*TMT	SEA-LAND
Canned Goods								
From Chicago, Illinois								
All Rail to Port								
28/	86-40M Balt.	40M	387.80	387.80		344.00		344.00
28/	86-40M Eliz.	86M	833.77	833.77		739.60		739.60
75/	96.95 36M Jax. (90.0 + 6.95 Handl. & Wfg)	129M	1250.65	1250.65		1109.40		1109.40
TMT Ocean to Puerto Rico								
	105 cwt. @ 40M	40M	420.00					
		86M	903.00					
		129M	1354.50					
Total TMT Rail & Ocean								
		40M	807.80					
		86M	1736.77					
		129M	2605.15					
Sea-Land to Puerto Rico								
	130 cwt.	40M		520.00		520.00		520.00
	120 cwt.	86M		1032.00		1032.00		1032.00
	110 cwt.	129M		1419.00		1419.00		1419.00
Total Sea-Land Rail & Ocean								
		40M		907.80		864.00		864.00
		86M		1865.77		1771.60		1771.60
		129M		2669.65		2528.40		2528.40
Differential								
		40M	100.00		* 56.20		* 56.20	
		86M	129.00		* 34.83		* 34.83	
		129M	64.50			76.75		76.75

Docket No. 1182

Exhibit No. _____

Part B

Page 27 of 28

Leaf Tobacco, Unmanufactured,
In Cartons or Boxes
From Richmond, Virginia

All Rail to Port

101/ 117 - 22M Balt.110/ 187 - 22M Jax.

140 - excess

TMT Ocean to Puerto Rico

36 cu. ft. @ 1440 cu. ft.

@ 1980 cu. ft.

Total TMT Rail and Ocean

Sea-Land to Puerto Rico

47 cu. ft. @ 1440 cu. ft.

@ 1980 cu. ft.

Total Sea-Land Rail and Ocean

Differential at 1440 cu. ft.

at 1980 cu. ft.

Jacksonville	
TMT	SEA-LAND

Baltimore	
*TMT	SEA-LAND

Elizabeth	
*TMT	SEA-LAND

411.40

411.40

257.40

518.40

712.80

929.80

1124.20

676.80

930.60

1088.20

1342.00

(C) 676.80

(D) 930.60

(C) 934.20

(D) 1188.00

158.40

217.80

= *4.40

*63.80

- Docket No. 1182
Exhibit No.
Part B
Page 28 of 28

* - TMT does not offer service to Puerto Rico through the ports of Baltimore and Elizabeth..

Sea-Land and TMT rates include landing charges.

Tariff Authority:

Sea-Land - Puerto Rican Division FMC - F No. 3, Outward Freight Tariff No. 2

TMT - TMT Trailer Ferry, Inc., Freight Tariff No. 4, FMC - F No. 5

All Rail - As per Exhibit No. ~~4~~ Part B, pages ~~24-27~~ 22-25

Jacksonville Tonnage for 1965 to Puerto Rico - Number of Trailers, Vessels, Sailing and Arrival Dates

VESSEL & VOYAGE NO.	DESTINATION	SAILED JACKSONVILLE	ARRIVED PUERTO RICO	DRY VANS	WEIGHT (in lbs.)	REEFER VANS	WEIGHT (in lbs.)
					DRY VANS		REEFER VANS
Raphael Semmes 310	San Juan	1/ 3/65	1/ 6/65	34	-	21	-
310	Ponce			6	-	2	-
310	Mayaguez			3	-	-	-
Summit 48S	San Juan	1/10/65	1/14/65	24	-	25	-
48S	Ponce			23	-	7	-
48S	Mayaguez			7	-	1	-
NOTE - Maritime Strike to February 13, 1965							
San Juan 48E	San Juan	2/17/65	2/25/65	13	-	1	-
48E	Ponce			-	-	-	-
Fairland 260S	San Juan	2/22/65	2/25/65	42	-	40	-
260S	Ponce			4	-	5	-
260S	Mayaguez			4	-	3	-
San Francisco 23N	San Juan	2/24/65	3/ 4/65	28	-	1	-
23N	Ponce			18	-	1	-
23N	Mayaguez			2	-	1	-
Los Angeles 22S	San Juan	2/27/65	3/ 3/65	45	-	35	-
22S	Ponce			3	-	2	-
22S	Mayaguez			5	-	-	-
Fairland 261S	San Juan	3/ 9/65	3/11/65	27	-	24	-
261S	Ponce			5	-	1	-
261S	Mayaguez			2	-	1	-
Azalea City 311S	San Juan	3/15/65	3/19/65	24	948,730	32	1,098,590
311S	Ponce			2	92,184	-	-
311S	Mayaguez			2	77,992	-	-
Raphael Semmes 314S	San Juan	3/21/65	3/24/65	47	-	19	-
314S	Ponce			13	-	4	-

JA 165

EXHIBIT 11

3/2/66

VESSEL & VOYAGE NO.		DESTINATION	SAILED JACKSONVILLE	ARRIVED PUERTO RICO	DRY VANS	WEIGHT (in lbs.) DRY VANS	REEFER VANS	WEIGHT (in lbs.) REEFER VANS
Gateway City	303S	San Juan	5/31/65	6/ 4/65	65	-	25	-
	303S	Ponce			16	-	2	-
	303S	Mayaguez			1	-	-	-
Bienville	265S	San Juan	6/ 7/65	6/11/65	55	1,619,158	42	1,470,573
	265S	Ponce			21	851,729	-	-
	265S	Mayaguez			2	78,962	-	-
Gateway City	304S	San Juan	6/15/65	6/18/65	53	-	49	-
	304S	Ponce			14	-	2	-
	304S	Mayaguez			3	-	2	-
San Francisco	28E	San Juan) via	6/24/65	7/ 2/65	4	-	-	-
		Ponce) Eliz.			2	-	-	-
Bienville	266S	San Juan	6/22/65	6/26/65	61	-	38	-
	266S	Ponce			17	-	3	-
	266S	Mayaguez			3	-	3	-
Fairland	270S	San Juan	6/27/65	6/30/65	36	-	39	-
	270S	Ponce			13	-	4	-
	270S	Mayaguez			2	-	1	-
Raphael Semmes	322S	San Juan	7/ 5/65	7/ 8/65	53	1,525,405	32	1,099,009
	322S	Ponce			9	247,331	2	77,731
	322S	Mayaguez			3	87,808	1	42,352
Fairland	271S	San Juan	7/12/65	7/15/65	46	-	17	-
	271S	Ponce			13	-	5	-
	271S	Mayaguez			3	-	3	-
Raphael Semmes	323S	San Juan	7/18/65	7/21/65	31	-	22	-
	323S	Ponce			6	-	2	-
	323S	Mayaguez			4	-	1	-
Mayaguez	6S	San Juan	7/25/65	7/28/65	49	-	32	-
	6S	Ponce			8	-	1	-
	6S	Mayaguez			2	-	-	-

3/2/66

JA 167

DOCKET NO. 1182
CORR. EXHIBIT 11
Page 2 of 6

<u>VESSEL & VOYAGE NO.</u>	<u>DESTINATION</u>	<u>SAILED JACKSONVILLE</u>	<u>ARRIVED PUERTO RICO</u>	<u>DRY VANS</u>	<u>WEIGHT (in lbs.) DRY VANS</u>	<u>REEFER VANS</u>	<u>WEIGHT (in lbs.) REEFER VANS</u>
Raphael Semmes 314S	Mayaguez			2	-	1	-
Azalea City 312S	San Juan	3/29/65	4/ 2/65	28	-	40	-
312S	Ponce			6	-	4	-
312S	Mayaguez			6	-	1	-
Raphael Semmes 315S	San Juan	4/ 5/65	4/ 8/65	14	399,193	39	1,393,366
315S	Ponce			6	239,954	1	42,000
315S	Mayaguez			-	-	-	-
Azalea City 313S	San Juan	4/12/65	4/15/65	39	-	18	-
313S	Ponce			4	-	1	-
313S	Mayaguez			3	-	-	-
Bienville 261S	San Juan	4/19/65	4/22/65	37	-	18	-
261S	Ponce			3	-	-	-
261S	Mayaguez			4	-	3	-
Azalea City 314S	San Juan	4/27/65	4/30/65	54	-	27	-
314S	Ponce			5	-	1	-
314S	Mayaguez			3	-	-	-
Gateway City 301S	San Juan	5/ 2/65	5/ 7/65	43	1,487,311	30	1,062,693
301S	Ponce			13	533,911	3	118,285
301S	Mayaguez			1	30,598	-	-
Azalea City 315S	San Juan	5/10/65	5/14/65	67	-	30	-
315S	Ponce			23	-	-	-
315S	Mayaguez			1	-	4	-
Fairland 267S	San Juan	5/16/65	5/19/65	41	-	24	-
267S	Ponce			4	-	3	-
267S	Mayaguez			3	-	-	-
San Juan 55S	San Juan	5/26/65	5/30/65	73	-	27	-
55S	Ponce			27	-	1	-
3/2/66 55S	Mayaguez			7	-	-	-

JA 166

VESSEL & VOYAGE NO.		DESTINATION	SAILED JACKSONVILLE	ARRIVED PUERTO RICO	DRY VANS	WEIGHT (in lbs.) DRY VANS	REEFER VANS	WEIGHT (in lbs.) REEFER VANS
Fairland	273S	San Juan	8/ 1/65	8/ 5/65	51	1,289,772	28	1,014,374
	273S	Ponce			10	356,058	1	32,020
	273S	Mayaguez			4	135,104	1	33,100
San Francisco	29N	San Juan via Eliza.	8/ 3/65	8/11/65	10	-	-	-
Mayaguez	7S	San Juan	8/ 8/65	8/11/65	74	-	24	-
	7S	Ponce			15	-	2	-
	7S	Mayaguez			8	-	2	-
Ponce	11S	San Juan	8/16/65	8/20/65	49	-	14	-
	11S	Ponce			7	-	3	-
	11S	Mayaguez			6	-	1	-
Mayaguez	8S	San Juan	8/23/65	8/26/65	38	-	23	-
	8S	Ponce			5	-	-	-
	8S	Mayaguez			2	-	1	-
Ponce	12S	San Juan	8/29/65	9/ 2/65	54	-	17	-
	12S	Ponce			4	-	4	-
	12S	Mayaguez			8	-	-	-
Gateway City	311S	San Juan	9/ 7/65	9/11/65	46	1,511,016	31	1,061,679
	311S	Ponce			4	140,727	2	77,053
	311S	Mayaguez			1	16,230	-	-
Ponce	13S	San Juan	9/13/65	9/16/65	64	-	21	-
	13S	Ponce			12	-	3	-
	13S	Mayaguez			5	-	2	-
Gateway City	312S	San Juan	9/21/65	9/24/65	66	-	28	-
	312S	Ponce			6	-	-	-
	312S	Mayaguez			2	-	-	-
Ponce	14S	San Juan	9/29/65	10/ 2/65	38	-	26	-
	14S	Ponce			17	-	4	-
	14S	Mayaguez			5	-	-	-

3/2/66

JA 168

<u>VESSEL & VOYAGE NO.</u>		<u>DESTINATION</u>	<u>SAILED JACKSONVILLE</u>	<u>ARRIVED PUERTO RICO</u>	<u>DRY VANS</u>	<u>WEIGHT (in lbs.) DRY VANS</u>	<u>REEFER VANS</u>	<u>WEIGHT (in lbs.) REEFER VANS</u>
Fairland	273S	San Juan	8/ 1/65	8/ 5/65	51	1,289,772	28	1,014,374
	273S	Ponce			10	356,058	1	32,020
	273S	Mayaguez			4	135,104	1	33,100
San Francisco	29N	San Juan via Eliza.	8/ 3/65	8/11/65	10	-	-	-
Mayaguez	7S	San Juan	8/ 8/65	8/11/65	74	-	24	-
	7S	Ponce			15	-	2	-
	7S	Mayaguez			8	-	2	-
Ponce	11S	San Juan	8/16/65	8/20/65	49	-	14	-
	11S	Ponce			7	-	3	-
	11S	Mayaguez			6	-	1	-
Mayaguez	8S	San Juan	8/23/65	8/26/65	38	-	23	-
	8S	Ponce			5	-	-	-
	8S	Mayaguez			2	-	1	-
Ponce	12S	San Juan	8/29/65	9/ 2/65	54	-	17	-
	12S	Ponce			4	-	4	-
	12S	Mayaguez			8	-	-	-
Gateway City	311S	San Juan	9/ 7/65	9/11/65	46	1,511,016	31	1,061,679
	311S	Ponce			4	140,727	2	77,053
	311S	Mayaguez			1	16,230	-	-
Ponce	13S	San Juan	9/13/65	9/16/65	64	-	21	-
	13S	Ponce			12	-	3	-
	13S	Mayaguez			5	-	2	-
Gateway City	312S	San Juan	9/21/65	9/24/65	66	-	28	-
	312S	Ponce			6	-	-	-
	312S	Mayaguez			2	-	-	-
Ponce	14S	San Juan	9/29/65	10/ 2/65	38	-	26	-
	14S	Ponce			17	-	4	-
	14S	Mayaguez			5	-	-	-

JA 168

VESSEL & VOYAGE NO.		DESTINATION	SAILED JACKSONVILLE	ARRIVED PUERTO RICO	DRY VANS	WEIGHT (in lbs.) DRY VANS	REEFER VANS	WEIGHT (in lbs.) REEFER VANS	
Gateway City	313S	San Juan	10/ 4/65	10/ 7/65	55	-	25	-	
	313S	Ponce			28	-	8	-	
	313S	Mayaguez			4	-	1	-	
Ponce	15S	San Juan	10/12/65	10/16/65	52	1,499,395	28	1,017,651	
	15S	Ponce			11	416,036	1	38,164	
	15S	Mayaguez			4	136,809	1	40,642	
Gateway City	314S	San Juan	10/19/65	10/22/65	66	-	20	-	
	314S	Ponce			15	-	1	-	
	314S	Mayaguez			10	-	2	-	
Ponce	16S	San Juan	10/25/65	10/29/65	48	-	22	-	
	16S	Ponce			2	-	3	-	
	16S	Mayaguez			3	-	2	-	
Gateway City	315S	San Juan	11/ 2/65	11/ 6/65	70	2,219,454	19	725,526	JA 169
	315S	Ponce			13	551,649	1	37,725	
	315S	Mayaguez			4	147,694	3	118,739	
Mayaguez	15S	San Juan	11/ 9/65	11/12/65	52	-	24	-	
	15S	Ponce			2	-	2	-	
	15S	Mayaguez			3	-	2	-	
Fairland	282S	San Juan	11/14/65	11/17/65	49	-	23	-	
	282S	Ponce			18	-	1	-	
	282S	Mayaguez			3	-	1	-	
Mayaguez	16S	San Juan	11/24/65	11/27/65	38	-	21	-	
	16S	Ponce			7	-	3	-	
	16S	Mayaguez			3	-	3	-	
Fairland	283S	San Juan	11/29/65	12/ 3/65	67	-	22	-	
	283S	Ponce			7	-	1	-	
	283S	Mayaguez			8	-	2	-	
Mayaguez	17S	San Juan	12/ 8/65	12/12/65	44	1,507,927	27	980,022	
	17S	Ponce			2	40,218	-	-	
	3/2/66	Mayaguez			1	40,151	1	40,406	

VESSEL & VOYAGE NO.	DESTINATION	SAILED JACKSONVILLE	ARRIVED PUERTO RICO	DRY VANS	WEIGHT (in lbs.)		WEIGHT (in lbs.)	
					DRY VANS	REEFER VANS	REEFER VANS	REEFER VANS
Fairland	284S San Juan	12/13/65	12/16/65	64	-	40	-	-
	284S Ponce			8	-	2	-	-
	284S Mayaguez			7	-	2	-	-
Mayaguez	18S San Juan	12/22/65	12/25/65	43	-	28	-	-
	18S Ponce			10	-	3	-	-
	18S Mayaguez			6	-	2	-	-
Beauregard	287S San Juan	12/26/65	12/29/65	58	-	22	-	-
	287S Ponce			25	-	2	-	-
	287S Mayaguez			4	-	1	-	-
	San Juan			2330		1280		
	Ponce			512		103		
	Mayaguez			179		56		
	Grand Total			3021		1439		

SAMPLE:	10 Sailings	565	18,228,506	326	11,621,700
			Avg. Wt. Dry Vans		Avg. Wt. Reefer
			32,263		35,649

JA 170

3/2/66

EXHIBIT 12

DOCKET NO. 1182
EXHIBIT NO.:
PAGE 1 OF 2

Puerto Rican Tonnage for 1965 to Jacksonville - number of trailers, vessel, sailing and arrival dates

<u>VESSEL/VOYAGE NO.</u>	<u>SAILED PUERTO RICO</u>	<u>ARRIVED JACKSONVILLE</u>	<u>TRUCKLOAD DRY VANS</u>	<u>WEIGHT (in lbs.) DRY VANS</u>	<u>LTL DRY VANS</u>	<u>WEIGHT (in lbs.) LTL DRY VANS</u>	<u>REEFER VANS</u>	<u>WEIGHT (in lbs.) REEFER VANS</u>
Summit 48N		1/10/65	25	-	1	-	-	-
San Francisco 22N	2/21/65	2/24/65	75	-	14	-	-	-
Gateway City 296N	2/24/65	2/28/65	7	-	5	-	3	-
Azalea City 310N	3/4/65	3/7/65	21	-	4	-	6	-
Raphael Semmes 313N	3/10/65	3/13/65	15	550,696	4	49,764	1	37,000
Azalea City 311N	3/20/65	3/23/65	22	732,612	5	47,744	7	244,660
Fairland 263N	4/1/65	4/5/65	6	237,675	5	50,478	4	135,320
San Francisco 26N	3/29/65	4/1/65	13	377,085	3	36,915	5	180,510
Raphael Semmes 315N	4/9/65	4/12/65	18	585,505	2	39,270	8	277,180
Azalea City 313N	4/17/65	4/20/65	21	812,624	5	61,018	2	69,925
Bienville 261N	4/23/65	4/27/65	12	353,233	4	39,925	-	-
Azalea City 314N	5/1/65	5/4/65	8	163,376	5	50,639	3	112,100
Gateway City 301N	5/8/65	5/11/65	16	420,671	5	41,537	6	210,180
San Juan 54N	5/16/65	5/19/65	12	458,384	5	37,493	5	153,200
Bienville 264N	5/27/65	6/1/65	13	418,272	3	27,705	4	146,000
Los Angeles 24N	5/22/65	5/25/65	19	547,684	-	-	-	-
Gateway City 303N	6/4/65	6/7/65	17	436,900	7	100,675	4	140,562
Bienville 265N	6/12/65	6/15/65	28	835,074	8	72,748	4	143,778
San Francisco 28N	6/20/65	6/23/65	16	378,504	7	50,732	3	104,085
Bienville 266N	6/26/65	6/29/65	11	349,727	10	87,253	4	132,187
Los Angeles 25N	7/3/65	7/6/65	15	497,013	6	35,379	2	71,215
San Juan 56N	7/10/65	7/13/65	15	495,736	11	118,408	2	75,400
Fairland 271N	7/16/65	7/19/65	15	545,183	6	40,120	2	73,700
Elizabethport 32N	7/21/65	7/24/65	12	363,246	6	48,640	-	-
Fairland 273N	8/5/65	8/9/65	19	618,701	6	47,494	2	74,600
San Francisco 29N	7/31/65	8/3/65	26	838,597	10	96,582	2	65,800
Raphael Semmes 325N	8/13/65	8/16/65	16	452,419	7	72,318	2	71,600
San Juan 57N	8/21/65	8/24/65	12	434,111	9	52,747	4	148,400
Gateway City 310N	8/26/65	8/29/65	17	515,677	7	67,816	3	106,800
Elizabethport 33N	9/1/65	9/5/65	23	758,149	6	60,239	2	72,500
Gateway City 311N	9/11/65	9/14/65	26	809,054	6	100,396	4	146,000
Ponce 13N	9/17/65	9/20/65	13	266,343	3	26,515	2	73,200
Gateway City 312N	9/25/65	9/27/65	26	1,032,276	8	93,613	4	134,200
Fairland 278N	10/1/65	10/4/65	17	646,895	7	75,563	3	96,500

3/2/66

Puerto Rican Tonnage for 1965 to Jacksonville, continued

VESSEL/VOYAGE NO.		SAILED PUERTO RICO	ARRIVED JACKSONVILLE	TRUCKLOAD DRY VANS	WEIGHT (in lbs.)	LTL DRY VANS	WEIGHT (in lbs.)	REEFER VANS	WEIGHT (in lbs.)
					DRY VANS		LTL DRY VANS		REEFER VANS
Gateway City	313N	10/9/65	10/12/65	27	589,758	11	140,757	4	143,560
Elizabethport	34N	10/14/65	10/18/65	18	629,320	4	70,929	4	137,094
Gateway City	314N	10/23/65	10/26/65	32	1,114,011	10	92,781	5	174,800
Mayaguez	14	10/30/65	11/2/65	12	446,572	8	56,873	4	136,100
Fairland	281N	11/5/65	11/8/65	15	521,133	6	74,402	6	220,700
Fairland	282N	11/19/65	11/22/65	13	398,872	6	86,062	6	216,986
Elizabethport	35N	11/28/65	12/1/65	25	712,915	10	88,856	7	254,750
Fairland	283N	12/4/65	12/6/65	20	624,724	10	89,430	5	186,700
Gateway City	318N	12/10/65	12/13/65	25	832,793	5	34,230	5	180,500
Fairland	284N	12/18/65	12/21/65	18	537,626	5	70,456	3	108,460
TOTALS:				*(832)		*(275)		*(152)	
				704	22,339,146	251	2,534,502	143	5,056,252
					ave. 31,732		ave. 10,098		ave. 35,358

* Weight statistics not available for first four sailings of year.

SOURCE: Weekly Recap - Puerto Rican Tonnage to Jacksonville - computed by Sea-Land's Jacksonville office.

3/2/66

SEA-LAND SERVICE, INC. : DOCKET 1182
1964 REVENUE

Set	Commodity	Code TMT	Code S-L	Via Port of N.Y. N.Y. Area	Equalized Area	Via Port of Baltimore Baltimore Area	Equalized Area	Via Port of Jacksonville Jacksonville Area	Equalized Area	Total
1	Autos, Passenger	613	37111	\$1,664,484	\$ 50,000 ^{1/}	\$ 4,323	\$ --	\$ 3,075	\$ --	\$ 1,721,882
2	Machinery	595	35699	232,729	--	30,566	--	10,543	--	273,838
3	Refrigerators	707	36320- 36325	147,069	--	10,012	--	6,163	--	163,245
4	Furniture	715	25190- 25198	284,575	--	111,198	12,456	9,994	--	418,223
5	Stoves	711	36311- 36312	51,909	--	8,799	12,000	25,199	--	97,907
6	Household Goods ^{2/}	705	41211- 41214	239,997	--	30,685	--	14,941	--	285,623 290,173
7	Laundry Eqpt.	709	36333- 36336	27,804	--	12,534	--	--	--	40,338
9	Electrical Eqpt. ²	685	Various	505,830	18,000	103,741	--	14,847	--	642,418
10	Food Products	763	Various	594,798	49,500	118,953	--	60,588	--	823,839
13	Autos, Freight	615	37112	579,749	27,000	295	--	5,445	--	612,489
14	Vehicles O/T Motor	611	37152	4,584	--	360	--	28	--	4,972
16	Building Materials	679	34411- 34413	43,077	--	12,201	--	92	--	55,370
17	Drugs	553	28342- 28344	121,483	--	1,727	1,300	690	--	125,200

JA 173

EXHIBIT 17

SEA-LAND SERVICE, INC. - DOCKET 1182
1964 REVENUE

Set	Commodity	Code TMT	Code S-L	Via Port of N.Y.		Via Port of Baltimore		Via Port of Jacksonville		Total
				N.Y. Area	Equalized Area	Baltimore Area	Equalized Area	Jacksonville Area	Equalized Area	
18	Manufactured I/S	583	33121- 33216	\$ 340,623	\$ 24,000	\$ 243,216	\$ --	\$ 9,412	\$ --	\$ 617,251
19	Containers	785	24413- 34998	4,031	31,750 ^{3/}	9,493	63,702 ^{3/}	682	--	109,658
21	Dry Goods	-	23998	583,141	--	14,229	--	51,371	--	648,741
21	Cotton Piece Goods	-	22995	141,924	--	162,934	--	14,172	--	319,0
22	Poultry	-	20161	149,618	--	84,221	--	318,026	--	551,865
23	Meat	-	20121	384,460	52,075	76,282	--	7,927	--	520,744
25	Feed	-	20421	269,362	--	67,584	--	27,196	--	364,142
26	Bottles	-	32219	227,210	--	89,990	4,500	17,000	--	338,700
27	Cigarettes	-	21111	138,785	--	192,857	--	--	--	331,642
28	Paper - Cleansing	-	26215	288,158	32,000	4,168	--	5,999	--	330,325
28	Paper - Boxes	-	26531	206,601	4,200	13,920	--	8,183	--	232,904
28	Paper - Wrapping	-	26216	16,945	--	2,832	--	43,460	--	63,27
29	LTL - \$10	-	47111	282,437	--	37,886	--	--	--	320,323
30	Potatoes	-	01195	283,429	--	1,050	--	122,224, 1,175	--	285,653
31	Cargo, N.O.S.	-	39999	258,779	--	17,246	--	609	--	276,635
32	Tobacco Leaf	-	01193	183,714	--	6,398	--	27,089	--	217,201

JA 174

SEA-LAND SERVICE, INC. - DOCKET 1182
1964 REVENUE

Set	Commodity	Code TMT	Code S-L	Via Port of N.Y. N.Y. Area	Equalized Area	Via Port of Baltimore Baltimore Area	Equalized Area	Via Port of Jacksonville Jacksonville Area	Equalized Area	Total
33	Eggs in Shells	-	01522	\$ 164,161	\$ --	\$ 119,035 ¹	\$ --	\$ 69,279	--	\$ 233,440
34	Detergent Soap	-	28413- 28419	256,898	--	119,035	--	2,236	--	378,169
35	Sandals - Shoes	-	31412	209,965	--	66,670	--	1,128	--	277,763
36	Tin Cans SU and KD	-	34118 34119	127,679	--	153,697	--	7,090	--	288,466
37	Plumbing Materials	-	34319	142,457	62,000	55,456	--	--	--	259,913
38	Synthetic Yarn	-	22812	96,471	--	70,110	--	13,065	--	179,646
39	Paint, N.O.S.	-	28519	137,742	--	20,660	--	10,025	--	168,427
40	P.A.K.	-	44111	1,812,167	--	12,799	--	14,192	--	1,839,158
41	Reefer, N.O.S.	-	46221	153,050	--	3,497	--	10,145	--	166,692
42	Ice Cream	-	20241	--	--	--	--	111,000	--	111,000
43	Produce	-	01211 01399	171,369	--	22,915	--	103,665	--	297,949
44	Catalyst	-	28199	60,537 ⁴	--	11,550	--	45,021	--	117,108

JA 175

- 1/ From Southeast.
- 2/ Household Goods are received from van lines.
- 3/ The containers moving from the equalized area are empty wooden barrels and not the empty cylinders.
- 4/ Revenue shown as New York probably should be via Jacksonville.

EXHIBIT 18

MOTOROLA OVERSEAS CORPORATION

December 29, 1965

Mr. R. L. Dausend
General Traffic Manager
Sea-Land Service, Inc.
P. O. Box 1050
Elizabeth, New Jersey

Dear Sir:

We have a licensee and a distributor in Puerto Rico, and have used practically every ocean carrier plying the U.S./Puerto Rico route.

However, we are not in a position to use Sea-Land Service, Inc., out of Jacksonville, Florida, because of the present TMT rate differential. If there was an equalization of rates at Jacksonville, we would very seriously consider favoring Sea-Land Service, Inc., with a portion of our traffic to Puerto Rico.

Unfortunately and until such time as an equalization of rates takes place at the Port of Jacksonville, Sea-Land Service, Inc., cannot possibly share in this traffic with Motorola products.

Since the sale of our consumer products in Puerto Rico is on a very competitive basis with not only the United States but with foreign made products as well, we naturally become very cost conscious, and look to an equalization of rates and competitive services rendered by those carriers serving the Puerto Rican trade.

Yours truly,

MOTOROLA OVERSEAS CORPORATION


M. Masek
Export Traffic Manager

MM/gar

CC: W. R. Goins, Chicago Sales Manager,
Sea-Land Service, Inc.

ARNOLD, SCHWINN & Co.

Schwinn BICYCLES

1856 NORTH KONTNER AVENUE

CHICAGO, ILLINOIS 60639

TELEPHONE
CAPITAL 7-3000
AREA CODE 312

January 3, 1966

Mr. R. L. Dausend
General Traffic Manager
Sea-Land Service, Inc.
P. O. Box 1050
Elizabeth, New Jersey 07207

Dear Sir:


We are now routing our shipments to Puerto Rico via TMT. We are shipping bicycles, and bicycle parts from our plant in Chicago, Illinois. We are forced to use TMT due to their lower rate level.

Our company is not in a position to consider Sea-Land Service due to the present rate differential existing between TMT and Sea-Land. If there was a rate equalization at the Port of Jacksonville, we would give serious consideration to favoring Sea-Land with a portion of our traffic. Unless equalization takes place, we have no alternative but to continue to give TMT 100% of our business to Puerto Rico.

The need in here is for a competitive Sea Line.

Very truly yours,

ARNOLD, SCHWINN & CO.


R. L. Acosta
Import-Export Manager

RLA:es

cc: William R. Goins

JA 178



ALBERTO-CULVER COMPANY

2525 Armitage Avenue • Melrose Park, Illinois 60160 • ESTebrook 9-3700

January 3, 1966

Mr. R. L. Dausend
General Traffic Manager
Sea-Land Service Inc.
P. O. Box 1050
Elizabeth, New Jersey

Dear Mr. Dausend:

We are presently favoring T.M.T. Trailer Ferry, on our shipments to Puerto Rico. We are shipping Hair Preparations from Melrose Park to Jacksonville, Florida. T.M.T. is being favored due to their lower rate level of 60¢ per cubic foot on 2000 cubic feet.

Due to the lower rate which we can secure from T.M.T. Trailer Ferry, our company is not in a position to consider Sea-Land Service due to the present rate differential existing between T.M.T. and Sea-Land. If there was a rate equalization at the port of Jacksonville, we might consider using the services of Sea-Land. Unless equalization takes place, we can not even consider Sealand's service, and we will continue using the services of T.M.T.

Very truly yours,

ALBERTO-CULVER COMPANY

Karen A. Garifo

Karen A. Garifo
Traffic Manager International Div.

JA 179

THE *Manhattan* SHIRT COMPANY
PATERNON, N. J.

TRAFFIC DEPARTMENT

WTX 99.9 NYT

January 4, 1966

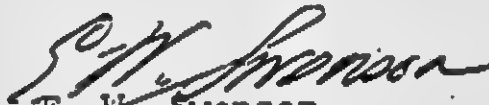
Sea-Land Service
P. O. Box 1050
Elizabeth, New Jersey

Attention: Mr. R. L. Dawson
General Traffic Manager

Dear Mr. Dawson:

If Sea-Land Service equalized the rates between Puerto Rico and Jacksonville, Florida, we would seriously consider the use of this service on at least a portion of the movement.

Very truly yours,


E. W. Swenson,
Traffic Manager

A.E. Staley Manufacturing Company

CORN AND SOYBEAN PRODUCTS

JAN 6 1966

Decatur, Illinois

January 4, 1966

Mr. R. L. Bausend
General Traffic Manager
Sea-Land Service, Inc.
P.O. Box 1050
Elizabeth, New Jersey 07207

Dear Mr. Bausend:

We are presently favoring TMT trailer ferry on our shipments from Jacksonville to San Juan, Puerto Rico. We are shipping Grocery Products from Jacksonville. TMT is being favored on the San Juan cargo due to their lower rate level and lower pickup and delivery charges.

Our company is not in a position to consider Sea-Land Service, due to the present rate differential existing between TMT and Sea-Land. If there was rate equalization at the port of Jacksonville, serious consideration would be given to favoring Sea-Land with a portion of our San Juan traffic. Unless equalization takes place, we will have no alternative but to continue to give TMT 100% of our San Juan business. Our Mayaguez and Ponce business will continue to move on Sea-Land.

This should define our position in regard to this matter.

Sincerely yours,

C. A. Wilhelm

Supervisor - Export Services
Transportation Department

CAWilhelm/ms

cc - Mr. Wm. R. Goins
Chicago Sales Manager
Sea-Land Service, Inc.
327 S. LaSalle Street
Chicago, Illinois 60604

1816, HATO REY. P. R.
TEL. 767-4242

Mejías Brothers, Inc.

CABLE ADDRESS:
MEJIASBROS. SAN JUAN

MANUFACTURERS' REPRESENTATIVES
461 FRANCIA ST COR. AMERICA - HATO REY. P. R. - 00919

January 5, 1966.

Mr. R. L. Dausend
General Traffic Manager
Sea Land Service, Inc.
P. O. Box 1050
Elizabeth, New Jersey

Dear Sir:

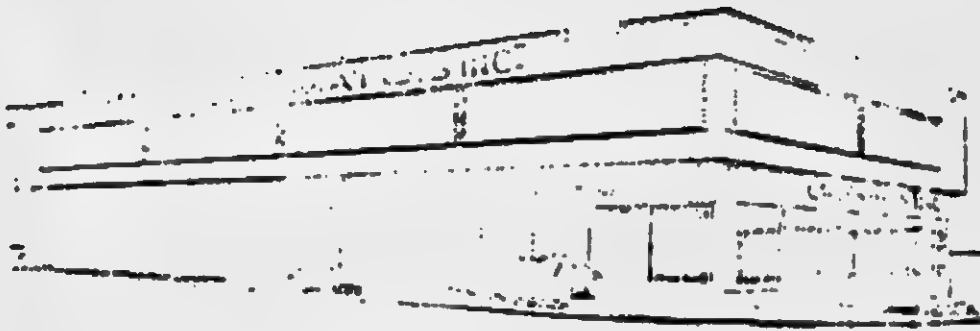
We are moving regular shipments of furniture from various manufacturers thru Jacksonville, Fla., but we cannot use your service because your rates are higher than what we pay to T.M.T. If the present differential in favor of T.M.T. is equalized, we would favorably consider the use of your service for the movement of a share of our shipments.

You will realize that until the equalization is made, we cannot patronize your service from Jacksonville.

Very truly yours,

MEJIAS BROTHERS, INC. :


Hector Mejias



Carlos Matos, Inc.

AGENCIES AND COMMISSIONS

Puerto Rico • Virgin Islands • Dominican Republic

P.O. BOX 9926 • SANTURCE • SAN LUIS & BLAY • REPARTO MECANICA • SAN JUAN, PUERTO RICO • TEL. 782-1020 782-1

January 5, 1966

MR. R. L. DAUSEND
GENERAL TRAFFIC MANAGER
Sea Land Service Inc.
P.O. Box 1050
Elizabeth, New Jersey

Dear Sir:

We are moving regular shipments of:

Gate City Table Co., Atlanta, Georgia
Southern Cross Industries Corp., Atlanta 1, Georgia
Atlanta Stove Works Inc., Atlanta, Georgia
Florida Furniture Industries Inc., Palatka, Florida
Standard Fte. Mfg. Co., Bay Minette, Alabama
Cooke Mfg. Company, Cleveland, Tenn., and various others, thru Jacksonville

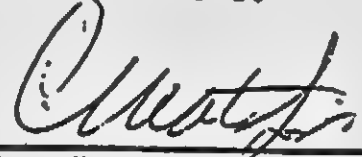
but we cannot use your service because your rates are higher than what we pay to T.M.T.

If the present differential in favor of T.M.T. is equalized, we would favorably consider the use of your service for the movement of a share of our shipments.

You will realize that until the equalization is made, we cannot patronize your service from Jacksonville.

Very truly yours,

CARLOS MATOS INC.


Carlos Matos, Jr.
President

CM:ib

WEST INDIES COMMERCIAL, INC.
SAN JUAN BAY DEVELOPMENT
AVE. KENNEDY KM. 2.5
P. O. BOX 12205, LOIZA STA., SANTURCE, PUERTO RICO 00914

January 5, 1966

Mr. R. L. Dausend
General Traffic Manager
Sea Land Service, Inc.
P O Box 1050
Elizabeth, New Jersey

Dear Sirs:

We are moving regular shipments of cookies from Murray Biscuit Co., Augusta, Georgia, thru Jacksonville, Fla. but we can not use your service because your rates are higher than what we pay to T. M. T.

If the present differential in favor of T. M. T. is equalized, we would favorably consider the use of your service for the movement of a share of our shipments.

You will realize that until the equalization is made, we can not patronize your service from Jacksonville.

Very truly yours,

WEST INDIES COMMERCIAL, INC.

By:


General Manager

DISTRIBUTORS: BEECH NUT BABY FOODS . LIFE SAVERS CANDY . MURRAY COOKIES



Quality Furniture Sales Inc.

CONDOMINIO CENTRO COMERCIAL LAS LONAS
AVE. CENTRAL ESQ. AVE. SAN PATRICIO, RIO PIEDRAS, P. R.

TELEFONO 783-0709

San Juan, P.R.
Jan 5th, 1966

Mr. R. L. Dausend
General Traffic Manager,
Sea Land Service, Inc.

P. O. Box 1050,
Elizabeth, New Jersey.

Dear Sir:

We are ordering all our shipments of furniture from Karen, Inc. D. Von Corp and other suppliers in High Point and Thomasville, N. C. thru the port of Jacksonville, Fla. and TMT because the rate of TMT is much lower than yours from the same port.

A salesman from your San Juan office has been calling on us regularly, but unless you people arrange to assess on our shipments the same rate as that of the TMT it is very easy for you to understand that we just can't favor you with any of our business.

Therefore, if you could equalize the present difference in favor of TMT, then I would consider giving you at least part of the business, but in the meantime it is useless to try us to give you any business.

Yours very truly,

Lawrence V. Whitaker
Lawrence Whitaker, Mgr.

LW/a

TARTAK DISTRIBUTORS CORP.

FOUNDED 1932

TELEPHONES:

724-0350 - 724-3870 - 723-1781

MANUFACTURERS' REPRESENTATIVES
AND IMPORTERS

1353 PONCE DE LEON AVE. - STOP 19

P. O. BOX 9625

SANTURCE, PUERTO RICO

January 5, 1966

Mr. Antonio Navarrete
c/o Sea Land Sales of Puerto Rico
San Juan, P.R.

Re: Shipper- Admiral Corp. Int.
Commodity: T.V., Stereos, Air Cond.,
Refrigerators, Freezers

Dear Navarrete:

Like you know we are moving regular shipments by T.M.T. because your rates are higher than what we are paying to T.M.T.. If this difference in prices and conditions is equalized we are going to use your service moving part of our merchandise. We do this because you are a good friend of us.

Thanking your cooperation about this matter, we are.

Very truly yours,

TARTAK DISTRIBUTORS CORP.

By:  P. Tartak

FURNITURE, RADIOS, REFRIGERATION, RANGES, WASHERS, ETC.
SOLE REPRESENTATIVES FOR ADMIRAL CORP. - BLACKSTONE CORP. - BARCALO MFG. CO.

JA 186

MUEBLERIAS TARTAK, INC.

CABLE ADDRESS
'TARTAKINC'
P. O. BOX 9625
SANTURCE, PUERTO RICO

1254 PONCE DE LEON AVE. STOP 18 - SANTURCE TEL. 723-3070
1405 PONCE DE LEON AVE. STOP 20 - SANTURCE 724-1984
1903 LOYZA ST. 723-1761
65 TH INFANTRY AVE. RIO PIEDRAS 765-8290
PONCE DE LEON AVE. STOP 27, NATO KEY

January 5th, 1966.

Mr. R. L. Dausend
General Traffic Manager
Sea Land Service Inc.
P.O. Box 1050
Elizabeth, New Jersey

Dear Sir:

We are moving regular shipments of furniture from Broyhill Furniture, Lenoir, North Carolina and many other shippers, thru Jacksonville, Fla., but we can not use your service because your rates are higher than what we pay to T.M.T.

If the present differential in favor of T.M.T. is equalized, we would favorably consider the use of your service for the movement of a share of our shipments.

You will realize that until the equalization is made, we can not patronize your service from Jacksonville.

Very truly yours,

MUEBLERIAS TARTAK, INC.

By: *E. Zimmerman*
E. Zimmerman, Comptroller

EZ/gg

THE MOST COMPLETE LINE OF FURNITURE - APPLIANCES AND HOUSEHOLD FURNISHINGS IN PUERTO RICO

Distribuidores:

Neveras Zenith y Marquette
Equipos de Hi-Fi. Televisores
y Esteriofónicos Magnavox
Lavadoras y Secadoras Maytag

VAN DAALEN BROS., INC.
AVENIDA MUÑOZ RIVERA 879
RIO PIEDRAS. PUERTO RICO

Ventas y Servicio: Tel. 766-3469
Oficinas: 766-3764
P. O. BOX 8675
Sanurce, Puerto Rico

January 5th, 1966

Mr. R. L. Dausend,
General Traffic Manager,
Sea Land Service, Inc.
P. O. Box 1050,
Elizabeth, N. J.

Dear Sir:

Your people in San Juan, P. R. have been calling on us regularly for our shipments of stereos and radios from Magnavox Co., Fort Wayne, Ind. as well as washers from Maytag Corp., Newton, Iowa, which we have been moving thru the port of Jacksonville, Fla. and TMT Trailer Ferry Service beyond to San Juan because the ocean rates of TMT are lower than your ocean rates from Jacksonville, Fla. on the products we receive.

We simply can't give you any business unless you equalize the rates of your competitor.

Therefore, you will see there is no point in you people insisting on a part of our business until and unless the differentials in favor of TMT are taken care of by you service.

Yours very truly,

Homer S. Van Daalen
VAN DAALEN BROS., INC.
Homer S. Van Daalen, Pres.

HSVD-gp



BORG-WARNER INTERNATIONAL CORPORATION

PUERTO RICO BRANCH
553 CAROLINA ST.
HATO REY, P. R.

TELEPHONES:

MANAGEMENT AND SALES 767-6000

SERVICE DEPARTMENT 767-2339

CABLE: BORINTCO P. R.

January 5, 1966

Mr. R. L. Dausend
General Traffic Manager
Sea Land Service Inc.
P. O. Box 1050.
Elizabeth, New Jersey

Dear Sir:

For the past two or three years we have been making regular shipments of household appliances from Norge and Motorola factories in Ft. Smith, Arkansas, southern Illinois, and Chicago, Illinois, through Jacksonville, Florida, but we cannot use your service because your rates are higher than what we pay to T.M.T. If the present differential in favor of T.M.T. is equalized, we would favorably consider the use of your service for the movement of a share of our shipments.

You will realize that until the equalization is made, we cannot patronize your service from Jacksonville.

Very truly yours,

Theodore DuBois
Theodore DuBois
Sales Manager

TD:cn



VAQUERIA GALCOW, INC.

Luquillo, Puerto Rico

Telephone: 767-8741

Cable: GALTOW

January 7, 1966

Mr. R. L. Dausend
General Traffic Manager
Sea Land Service, Inc.
P. O. Box 1050
Elizabeth, New Jersey

Dear Sir:

We wish to inform you that we receive regular shipments of dairy cattle feed from Florida Feed Mills, Jacksonville, Florida, through the Port of Jacksonville. We only use your service for this movement because your rate is lower than T.M.T.'s on this commodity. We are entirely dependent upon Sea Land's continued operation of your Jacksonville-Puerto Rico service due to the rate differential which exists in your favor on this commodity.

Very truly yours,

Joe S. Galbraith, Jr.

JA 190

P. O. BOX 2248 S. J.

ESTABLISHED SINCE 1912

CABLE: COBLAN

LUCAS BLANCO & CO.

303 RECINTO SUR
SAN JUAN. PUERTO RICO 00903
TEL. 723.1465

DE DIEGO AT CENTRAL
CAPARRA TERRACE. P. R.
TEL. 783.1510

AUTO SUPPLIES

SCHWINN - BICYCLES

HARDWARE

JANUARY 7TH, 1966

MR. R. L. DAUSEND
GENERAL TRAFFIC MANAGER,
SEA LAND SERVICE, INC.
P. O. BOX 1050,
ELIZABETH, N. J.

DEAR SIR:

THIS IS TO ADVISE YOU THAT ALL OUR CARLOAD SHIPMENTS
OF BICYCLES FROM ARNOLD, SCHWINN & CO., CHICAGO, ILL.
HAVE BEEN MOVING AND WILL CONTINUE TO MOVE THRU JACKSONVILLE,
FLA. AND TMT FROM SUCH PORT TO SAN JUAN, P. R. BECAUSE
ITS OCEAN FREIGHT RATE IS MUCH LOWER THAN YOURS FROM JACKSONVILLE.

UNLESS YOU PEOPLE EQUALIZE PRESENT DIFFERENTIAL IN
FAVOR OF TMT, WE SIMPLY CANNOT CONSIDER USING YOUR SERVICE.

IF AND WHEN THE RATE IS THE SAME BY BOTH WAY, WE
SHALL BE GLAD TO CONSIDER FAVORING YOUR SERVICE WITH A
PORTION OF OUR SHIPMENTS.

YOURS VERY TRULY,

LB/AJ

LUCAS BLANCO & CO.
[Signature]

S. C. JOHNSON & SON, INC. RACINE, WISCONSIN, U.S.A.

Johnson

INTERNATIONAL

Harold F. Morrison
Box #024
San Juan,
Puerto Rico 00903

January 7, 1966

Mr. R. L. Dausend
General Traffic Manager
Sea Land Service, Inc.
P. O. Box 1050
Elizabeth, New Jersey

Dear Sir:

We move regular shipments of our entire line of products thru Jacksonville, Fla., but we have been moving the majority of these shipments in quantities of 60,000 lbs. or more via TMT due to the savings in rates. Should the rates be equalized I am sure that the Traffic Dept. in Racine, Wisconsin, where our shipments originate, would seriously consider using Sea Land service to move a share of these shipments.

In the meantime I am sure you realize that we must ship via the means which affords us the most favorable rates from Jacksonville. We do ship some amounts from New Jersey and find your equipment and service from there satisfactory.

Sincerely,

Harold F. Morrison
Harold F. Morrison
International Division

Admiral CORPORATION INTERAMERICANA
3800 COURTLAND STREET • CHICAGO 47, ILLINOIS

January 10, 1966

Mr. R. L. Dausend
General Traffic Manager
Sea-Land Service, Inc.
P. O. Box 1050
Elizabeth, New Jersey 07207

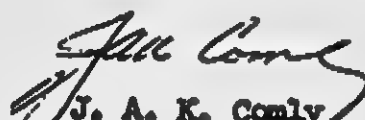
Gentlemen:

We are presently favoring TMT on our shipments to Puerto Rico. We are shipping refrigerators, freezers, air conditioners from Galesburg, Illinois and electronics, (radios and televisions) from Harvard, Illinois. TMT is being favored due to their lower rate level.

Our company is not in a position to consider Sea-Land Service due to the present rate differential existing between TMT and Sea-Land. If there was a rate equalization at the port of Jacksonville, serious consideration would be given to favoring Sea-Land with a portion of our traffic. Unless equalization takes place, we have no alternative but to continue to give TMT 100% of our business to Puerto Rico.

Very truly yours,

ADMIRAL CORPORATION INTERAMERICANA


J. A. K. Comly
Sales Manager

JA 193

Rafael Rigual

(Formerly A. Rubio & Co., San Juan and Oklahoma City)

... JOBBER ...

Florist Supplies and Allied Lines

PHONES 722-1264
723-1362

PESANTE 168

SANTURCE, P. R., U. S. A.

January 10, 1965

Mr. R. L. Dausend
General Traffic Manager
Sea Land Service Inc.
Elizabeth, New Jersey

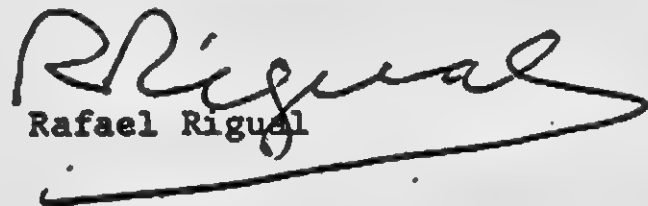
Dear Sir:

We are moving regular shipments of preserved foliage from Dr. H. Dux Mfg. Co., Box 2060, Jacksonville Fla. thru Jacksonville, Fla., but we can not use your service because your rates are higher than what we pay to T.M.T.

If the present differential in favor of T.M.T. is equalized, we would favorably consider the use of your service for the movement of a share of our shipments.

You will realize that until the equalization is made, we can not patronize your service from Jacksonville.

Very truly yours,


Rafael Rigual

RR/ff

Please Address Your Correspondence to P. O. Box 1509, San Juan, P. R

Please Address Your Parcels to Pesante 168 Santurce, P. R.

Cable Address: RARIG

MARTIN EXPORT COMPANY

TELS. 724-3068 • 723-6278

Paper Products

20 DELCASSE STREET

CONDADO • SANTURCE, PUERTO RICO 00907

Mr. R. L. Dansend
General Traffic Manager
Sea Land Service Inc.
P.O. Box 1030
Elizabeth, New Jersey

1/10/65

Dear Sir:

We wish to inform you that we receive regular shipments of Paper Products from Resolute Paper Products, through the port of Jacksonville. We only use this service for this movement because your rate is lower than T.M.T. on this commodity. We are entirely dependent upon Sea Land's continued operation of your Jacksonville-Puerto Rico service due to the differential which exists in your favor on this commodity.

Very Truly Yours
Martin J. Cohen

JA 195

Spanish-American Tobacco Co. Inc.

ALMACENISTAS, IMPORTADORES Y EXPORTADORES DE TABACO EN RAMA
COMISIONES-REPRESENTACIONES-INTERNEGOCIACIONES

CASA CENTRAL:
SAN JUAN PUERTO RICO
CALLE TETUAN, 395
P. O. BOX 332-TELEFONO 2-0422
CABLE: SPANISH (SAN JUAN)

SUCURSAL:
ALONSO RIERA & CO.
FABRICANTES DE PICADURA DE TABACO
CAGUAS, PUERTO RICO

AGENTES GENERALES EN ESPAÑA
HERMINIO MADERA Y CIA.
CALLE O'DONNELL, 24 8.
TELEFONO 236 82 06
MADRID-9 (ESPAÑA)
CABLE HERMINIDERA (MADRID)

SAN JUAN PUERTO RICO January 12, 1966

Mr. R. L. Dausend
General Traffic Manager
Sea Land Service Inc.
P.O.Box 1050
Elizabeth, New Jersey

Dear Sir:

We are moving regular shipments of insecticides and fertilizers from California Chemical Co., Ortho Div., Orlando, Fla., thru Jacksonville, Fla., but we can not use your service because your rates are higher than what we pay to T.M.T.

If the present differential in favor of T.M.T. is equalized, we would favorably consider the use of your service for the movement of a share of our shipments.

You will realize that until the equalization is made, we can not patronize your service from Jacksonville.

Very truly yours,


U. RODRIGUEZ DEL VALLE
Vice-Presidente

JA 196



CONVERSE RUBBER COMPANY

MANUFACTURERS OF

Canvas and Waterproof Footwear

MALDEN 18, MASSACHUSETTS, U. S. A.

January 20, 1966

Sea-Land Service, Inc.
PO Box 1050
Elizabeth, New Jersey

Attn: Mr. R.L. Dausend, G.T.M.

Gentlemen:

We use TMT Trailer Ferry, Inc. regularly on South and Northbound shipments because of rate differentials.

If Sea-Land will equalize the competitive rates we would consider using your services in this trade .

Very truly yours,
CONVERSE RUBBER COMPANY

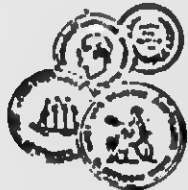
F.J. Burton
F.J. Burton
Traffic Manager

FJB:RM

CC: C. Chinn-Sea-Land
M. Nagle

DR. H. DUX COMPANY, INC.

CABLE ADDRESS:
DUXCO



MEALS & DIPLOMAS FROM
PRINCIPAL EXHIBITIONS



JACKSONVILLE, FLORIDA

ADDRESS ALL COMMUNICATIONS TO P. O. BOX 2060

January 20, 1966



ESTABLISHED
1902

REFERENCE:
AMERICAN NATIONAL
BANK

S. Proven

Mr. R. L. Dausend, General Traffic Manager
Sea Land Service, Inc.
P. O. Box 1050
Elizabeth, New Jersey

Dear Sir:

We are very much in favor of your equalizing rates between Jacksonville and Puerto Rico, with those charged by TMT Trailer Ferry. In our own line of products, the rate via TMT is about 20% lower and so we are using their service. However, in many cases, our freight has been left on the docks for a period of four to six weeks.

We sincerely hope you are successful in obtaining the new rates as we welcome the opportunity of shipping on the basis of competitive service rather than competitive price.

Yours very truly,

Dr. H. Dux Company, Inc.

By *Robert J. Steven*
Robert J. Steven
President

JA 198



FMC CORPORATION

NIAGARA CHEMICAL DIVISION

BOX 1709, JACKSONVILLE, FLORIDA 32201 • ELOIN 2-8041

January 25, 1966

Sealand Service Inc.
P. O. Box 1050
Elizabeth, New Jersey

Attention: Mr. R. L. Dausend
General Traffic Manager

Dear Mr. Dausend:

As an exporter into the West Indies area, we would be extremely interested in utilizing your facilities for the delivery of our commodities. However, we cannot unless you are able to bring your rates within the limits currently being applied for this service.

Very truly yours,

NIAGARA CHEMICAL DIVISION
FMC CORPORATION

E. L. Sanders
E. L. Sanders,
Production Manager

JA 199

OWENS-ILLINOIS

INTER-AMERICA CORPORATION

405 LEXINGTON AVENUE ① NEW YORK 17, NEW YORK

CABLES
OWENS-ILLINOIS NEW YORK
(NEW YORK)

February 1st, 1966

Mr. R. L. Dausend
Sealand Service Inc.
P.O. Box 1050
Elizabeth, New Jersey

Dear Mr. Dausend:

As you are probably aware, we regularly use your service from Jacksonville to Puerto Rico. We use the service because of regularity of sailing and rate structure.

We certainly trust that nothing interferes with your continuing this service since it is definitely included in our plans for the future.

Very truly yours,

OWENS-ILLINOIS INTER-AMERICA CORP.

BY


Manager

New York

EXHIBIT 19

TABLE 1

DEVELOPMENT OF SEA-LAND COST FOR MOVEMENT OF AVERAGE TRUCK-LOAD
SHIPMENT OF 30,000 POUNDS FROM JACKSONVILLE, FLA. TO PUERTO RICO

Line No.	I T E M (1)	Full Cost (100% Operating Exp.)		
		C-2 Vessels (2)	C-3 Vessels (3)	Average (4)
	<u>Cost Per Loaded Box</u>			
1	Vessel Expense	\$ 111.58	\$ 93.57	\$ xxx
2	Marine Terminal Exp. (Port & Stevedoring)			
a.	Jacksonville	21.18	24.04 ^{1/}	xxx
b.	Puerto Rico	28.84	28.05	xxx
3	Box Cost Aboard Ship	5.12	4.72	xxx
4	Sub-Total (Lines 1,2,3) <u>1/</u>	166.72	150.38	159.14
5	Billing & Collecting - Jacksonville	xxx	xxx	.60
6	Box & Chassis Exp. - Jacksonville	xxx	xxx	18.00
7	" " " " - Puerto Rico	xxx	xxx	13.60
8	Interline Exp. - Jacksonville	xxx	xxx	2.26
9	Total Excl. Platform & Puerto Rican Land Term.	xxx	xxx	193.60
	<u>Cost Per Cwt. (30,000 Lb. Load)</u>			
10	Cost Incl. in Line 9 above (L.9 ÷ 300 Cwt.)	xxx	xxx	64.5
11	Platform Exp. - Jacksonville	xxx	xxx	5.7
12	" " - Puerto Rico	xxx	xxx	1.7
13	Land Terminal Exp. - Puerto Rico	xxx	xxx	16.2
14	Sub-Total (Lines 10 to 13)	xxx	xxx	88.1
15	General Overhead	xxx	xxx	14.9
16	Total (Lines 10 to 15)	xxx	xxx	103.0

^{1/} Costs weighted to reflect movement of 53.6 per cent of loads in C-2 vessels and 46.4 per cent in C-3 vessels.

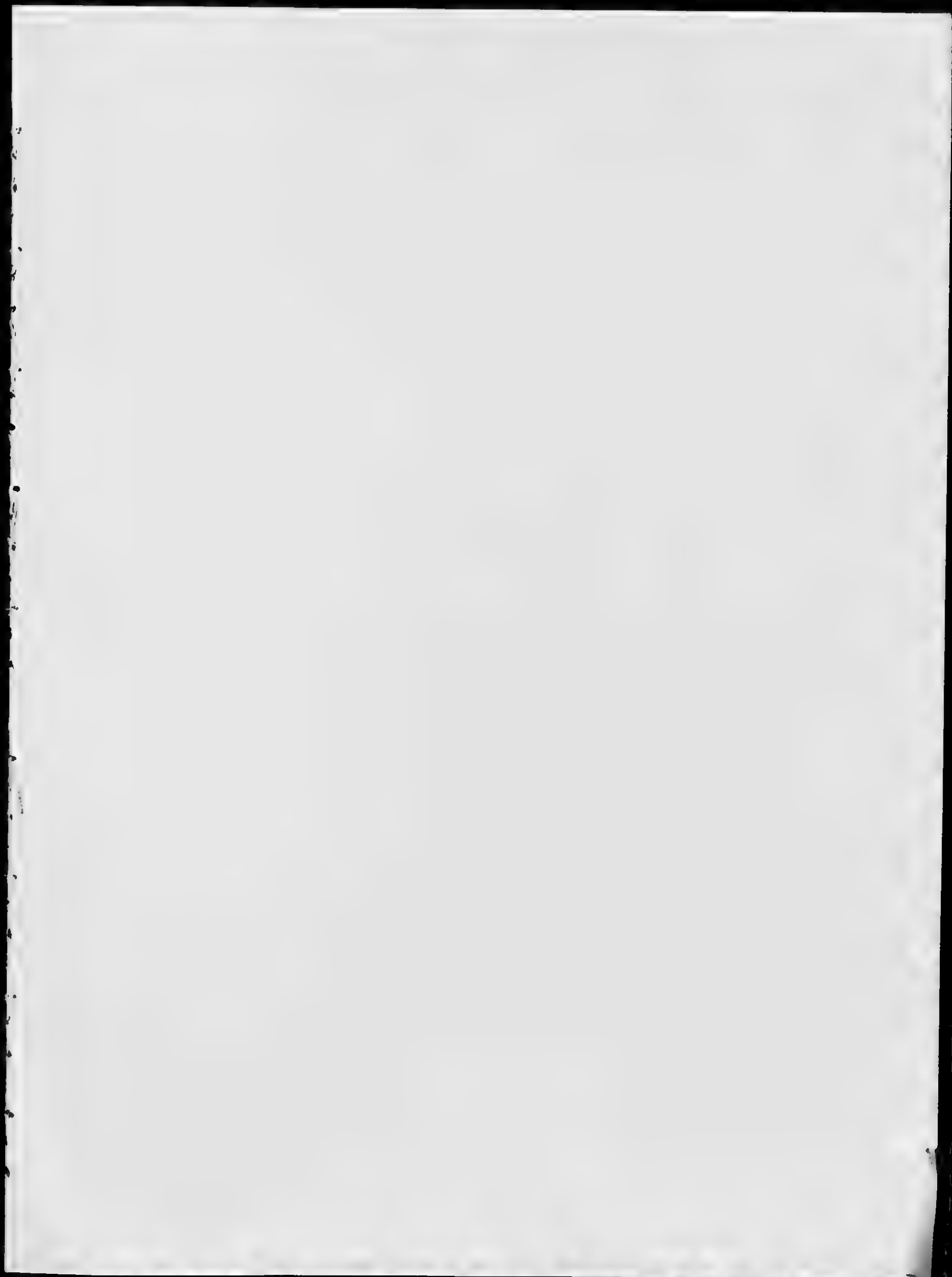


EXHIBIT 22

ARRIVAL AND DEPARTURES OF BARGES
TMT TRAILER FERRY, INC. - WATSON IS.

BARGE	TUG	CAPTAIN	JACKSONVILLE				MIAMI				SAN JUAN			
			DEPARTURES				DEPARTURES				DEPARTURES			
			TRIP	ARRV	TRIP	DEPT	TRIP	ARRV	TRIP	DEPT	TRIP	ARRV	TRIP	DEPT
FLORIDA	COPPEDGE JR.	HURLEY	71B	11-14	5B	11-14		7			5B	11-22	71B	11-23
			46	1240	52	1240					52	0700	52	2230
CAROLINA	COPPEDGE III	DAUGHERTY	71B	11-16	5B	11-17	5B	11-19	5B	11-19	5B	11-26	71B	11-27
			48	2215	54	1550	54	1300	54X	2055	54	2230	54	1830
BISCAYNE	MOULTRIE	JENKINS	71B	11-19	5B	11-19		8			5B	11-27	71B	11-28
			39	1345	56	2100					56	2300	56	1840
SAN JUAN	JOHNSON	WANSLEY	71B	11-19	5B	11-24	5B	11-26	5B	11-27	5B	12-3	71B	12-4
			50	0810	58	0815	58	0630	58X	1400	58	1245	43X	1600
GEORGIA	WARRENGAS	PLATZER					71B	11-27	5B	11-28	5B	12-4	71B	12-5
							41	1630	43X	0835	43	1100	58	1220
FLORIDA	COPPEDGE JR.	SCOTT	71B	11-30	5B	12-1	5B	12-3	5B	12-4	5B	12-10	71B	12-11
			52	2025	60	1715	60	2235	60X	1800	60	2130	60	2100
CAROLINA	COPPEDGE III	HIGHTOWER	71B	12-3	5B	12-4		8			5B	12-12	71B	12-14
			54X	2000	62	1700					62	0900	62	1945
BISCAYNE	MOULTRIE	JENKINS	71B	12-5	5B	12-7		9			5B	12-16	71B	12-17
			56	1500	64	1720					64	1200	64	1230
SAN JUAN	JOHNSON	SCARBOROUGH	71B	12-13	5B	12-15	71B	12-11	71B	12-11	5B	12-23	71B	12-23
		WANSLEY	68	1620	68	1010	43	1100	68	2030	68	0100	68	1800
GEORGIA	WARRENGAS	PLATZER	71B	12-12	5B	12-13	5B	12-15	5B	12-16	5B	12-23	71B	12-24
			58	1715	66	1520	66	1445	66	1530	66	1500	66	1315
FLORIDA	COPPEDGE JR.	AUSLIN	71B	12-18	5B	12-18	5B	12-21	5B	12-22	5B	12-28	71B	12-29
			60	1330	70	2120	70	0615	70	0945	70	0600	70	1700
CAROLINA	COPPEDGE III	HIGHTOWER	71B	12-21	5B	1-5	5B	1-7	5B	1-8		1-13		4
			62	0650	78	1725	78	1650	78X	1430				

Left Page

ARRIVAL AND DEPARTURES OF BARGES
THE TRAILER FERRY, INC. - WATSON IS.

		Jacksonville				Miami				San Juan					
BARGE	TUG	CAPTAIN	MIAMI				JACKSONVILLE				SAN JUAN				REMARKS
			TRIP	ARRV	TRIP	DEPT	TRIP	ARRV	TRIP	DEPT	ARRV	DEPT	TRIP	DEPT	
			NB	12-24	SB	12-26	SB	12-28	SB	12-29	SB	1-4	NB	1-4	SB-72 EX 1 EGGS (Mo)
Biscayne Capping 3 Daugherty			64	2050	72	1600	72	1430	72	0830	72	0200	72	1925	NB-72
			NB	12-29	SB	12-29					SB	1-5	NB	1-5	
San Juan Johnson Harbaugh			68	1215	74	2025					74	0900	74	1620	
			NB	12-31	SB	12-31					SB	1-8	NB	1-9	
Georgia Moultrie Henson			66	1200	76	1850					76	1530	76	1645	
			NB	12-21	SB	1-5	SB	1-7	SB	1-8	SB	1-14	NB	1-15	
Carolina Capping Jr. Hurley			62	0650	78	1725	78	1650	78	1430	78	1600	78	1845	
			NB	1-5	SB	1-11					SB	1-18	NB	1-18	
Florida Capping 3 Daugherty			70	1215	80	1350					80	0545	80	1915	
			NB	1-11	SB	1-11	SB	1-19	SB	1-14	SB	1-20	NB	1-20	
Biscayne Johnson Harbaugh			72	1240	82	1822	82	1450	82	1345	82	0145	82	1845	
			NB	1-11	SB	1-15					SB	1-23	NB	1-23	via miami to unload
San Juan B.C. Capping Jr. Hightower			74	1430	84	0805					84	1020	84	1945	
			NB	Continued Rept			NB	1-15	NB	1-15	Stopped at Mia to				
Georgia Moultrie Henson			76	Line			76	0653	76	1325	unloaded then dept to 94				
			NB	1-17	SB	1-18	SB	1-20	SB	1-20	SB	1-27	NB	1-27	
Georgia Moultrie Jenkins			76	1145	86	1615	86	1415	86	1815	86	0700	86	1800	
			NB	1-22	SB	1-22					SB	1-30	NB	1-30	
Carolina Capping Jr. Hurley			78	0855	88	2040					88	0730	88	2000	
			NB	1-24	SB	1-25		1-27	7	1-27	SB	2-1	NB	2-2	
Florida Capping 3 Daugherty			80	1525	90	1830		1345		2100	90	2200	90	1900	
			NB	2-26	SB	1-28			7		SB	2-4	NB	2-5	
Biscayne Johnson Harbaugh			82	2120	92	0555					92	0830	92	1630	

ARRIVAL AND DEPARTURE OF BARGES
FOR TOWNSHIP TERRY, ILL. - WAGON IS.

BARGE	TOW	CAPTAIN	MIAMI				JACKSONVILLE				SAN JUAN				REMARKS
			TRIP	ARRV.	TRIP	DEPT.	TRIP	ARRV.	TRIP	DEPT.	TRIP	ARRV.	TRIP	DEPT.	
Carolina	H.B. Copp	Whithead	708	3-12	08	3-13					08	3-21	708	3-23	
			108	0740	118	0710					118	1600	118	1100	
Florida	Copp III	Dougherty	708	3-13	08	3-16			7		08	3-23	708	3-24	
			110	1640	120	0710					120	2330	120	1845	
Lisapine	Johnson	Hamsley	708	3-16	08	3-17	08	3-19	70	3-20	08	3-27	708	3-28	
			112	0940	122	0630	122	1645	122x	1540	122x	0800	122	0630	
Madison	Moultrie	Hanson	708	3-24	08	3-24	08	3-26	08	3-27	08	4-2	708	4-3	
			114	0910	124	1700	124	1905	124x	1120	124x	1545	124	1830	
Georgia	Copp Jr.	Scott	708	3-28	08	3-28			8		08	4-5	708	4-6	
			116	0905	126	1720					126	1600	126	1925	
Carolina	H.B. Copp	Hightower	708	3-29	08	3-30	08	4-1	08	4-2	08	4-8	708	4-9	
			118	1725	128	1830	128	1700	128x	1900	128x	1800	128	1630	
Florida	Copp III	Slade	708	3-30	08	4-1			8		08	4-9	708	4-10	
			120	1845	130	2200					130	0700	130	0200	
Lisapine	Johnson	Scarbow	708	4-4	08	4-4	08	4-6	088	4-6	08	4-12	708	4-12	4/6 Johnson Returned to Dodge Del. for Repairs - 2/15-4
			132	0100	132	1325	132	1010	132x	1850	132x	0830	132	1830	
Madison	Moultrie	Hanson	708	4-10	08	4-10			8		08	4-18	708	4-19	
			124	1240	134	2030					134	0900	134	1845	
Georgia	Copp Jr.	Hurley	708	4-13	08	4-14	08	4-16	080	4-18	08	4-24	708	4-26	
			126	0845	136	1440	136	1640	136x	0800	136x	1030	136	0930	
Carolina	H.B. Copp	Hightower	708	4-16	08	4-16			7		08	4-23	708	4-24	
			128	0705	138	1930					138	2030	138	1800	
Florida	Copp III	Dougherty	708	4-16	08	4-19	08	4-21	08	4-22	08	4-28	708	4-30	Coast Guard Barge in tow from river
			130	0810	140	1515	140	1100	140x	1115	140	0930	140	1650	

Changed Days in San Juan

ARRIVAL AND DEPARTURES OF BARGES
TIT TRAILER FERRY, INC. - WATSON IS.

BARGE	TOC	CAPTAIN	Jacksonville				Miami				San Juan			
			TRIP	ARRV	TRIP	DEPT	TRIP	ARRV	TRIP	DEPT	ARRV	DEPT	TRIP	DEPT
	Maultrie	Jenkins	91B	1-31	SB	2-1	/	/	/	/	SB	2-11	91B	2-13
San Juan	H.B. Copp	Hightower	84	0645	94	1800	/	/	/	/	94	1530	94	1800
	Copp Jr.	Scott	91B	2-3	SB	2-3	SB	2-5	SB	2-6	SB	2-13	91B	2-15
Georgia	Maultrie	Jenkins	86	1030	96	1750	96	1435	96X	0525	96X	1500	96	1715
	H.B. Copp	Whithead	91B	2-6	SB	2-6	/	/	/	/	SB	2-15	91B	2-18
Carolina	Copp Jr.	Scott	88	0910	98	1700	/	/	/	/	98	0210	98	1300
			91B	2-9	SB	2-9	SB	2-11	SB	2-12	SB	2-18	91B	2-19
Florida	Copp III	Daugherty	90	1045	100	1830	100	1420	100X	1725	100X	1100	100	1215
			91B	2-12	SB	2-12	/	/	/	/	SB	2-20	91B	2-20
Delaware	Johnson	Norbourne	92	0210	102	1755	/	/	/	/	102	0900	102	2000
			91B	2-20	SB	2-20	/	/	/	/	SB	2-28	91B	3-1
San Juan	Maultrie	Wilson	94	0615	104	1815	/	/	/	/	104	1600	104	1945
			91B	2-22	SB	2-22	SB	2-25	SB	2-25	SB	3-3	91B	3-4
Georgia	Copp Jr.	Hurley	96	1225	106	1925	106	0830	106X	1630	106X	2000	106	1835
			91B	2-24	SB	2-26	/	/	/	/	SB	3-5	91B	3-5
Carolina	H.B. Copp	Whithead	48	2330	108	0715	/	/	/	/	108	2830	108	1945
			91B	2-25	SB	2-26	/	/	/	/	SB	3-5	91B	3-6
Florida	Copp III	Madri	100	1845	110	2010	/	/	/	/	110	1800	110	1945
			91B	2-27	SB	2-25	SB	3-2	SB	3-3	SB	3-8	91B	3-9
Delaware	Johnson	Norbourne	102	0725	112	1525	112	1425	112X	1525	112X	2045	112	1215
			91B	3-9	SB	3-9	/	/	/	/	SB	3-16	91B	3-17
San Juan	Maultrie	Jenkins	104	1135	114	2035	/	/	/	/	114	1730	114	2030
			91B	3-11	SB	3-12	SB	3-14	SB	3-14	SB	3-20	91B	3-21
Georgia	Copp Jr.	Scott	106	1440	116	0710	116	1430	116X	1730	116X	2300	116	1945

EXHIBIT 23

FMC Docket No. 1187
Exhibit (7-)TMT Trailer Ferry, Inc.
C. Gordon Anderson, TrusteeArrival & Departure Schedule
Tugs & Barges 1962

Trip No.	Barge	Tug	Captain	Departure Jacksonville	Arrival San Juan	Northbound Trip No.	Departure San Juan	Arrival Miami	Departure Miami	Arrival Jacksonville	Remarks
482	Florida	Fort Moultrie	Wasson	10-8-62 -1010	10-12-62-1400	NB-487	10-13-62-1630	10-20-62-1000	10-20-62-1700	10-22-62-1555	TMT Georgia Replaced By TMT Florida
484	San Juan	W.T.Coppedge III	Hightower	10-9-62 -1400	10-16-62-1400	NB-489	10-18-62-1630	10-23-62-2115	10-23-62-1700	10-27-62-0715	
486	Carolina	Fort Johnson	Jenkins	10-18-62-1000	10-26-62-0800	NB-491	10-27-62-1630	11-2-62 -0855	11-2-62 -2030	11-4-62 -1555	Departure Delayed One Day On Account of Tug
486X	Georgia	Fort Moultrie	Scarborough	10-23-62-2340	10-31-62-0800	NB-493	11-1-62 -1645	11-6-62 -1850	11-7-62 -1720	11-9-62 -1250	Completion of SB-486X
488	Florida	Fort Sumter	Scott	10-25-62-0905	11-3-62 -0800	NB-495	11-6-62 -1530	11-12-62-1030	11-12-62-1700	11-14-62-1555	W.T. Coppedge III Towing Florida and Fort Sumter on Return
490	San Juan	W.T.Coppedge III	Dougherty	10-30-62-1425	11-5-62 -1330	NB-497	11-13-62-1130	11-19-62-1315	11-19-62-2100	11-21-62-1415	Fort Johnson Towing on Return Voyage
492	Carolina	Fort Johnson	Scarborough	11-5-62 -1635	11-14-62-0700	NB-499	11-19-62-1330	-----	-----	12-4-62 -2130	Tug Berwind Towing (Brought in By Capt. Jenkins and Fort Moultrie)
494	Georgia	Fort Moultrie	Jenkins	11-10-62-1255	11-19-62-0700	NB-501	11-19-62-1600	11-24-62-1800	11-25-62-1220	12-3-62 -0210	
496	Florida	W.T.Coppedge III	Dougherty	11-15-62-1635	11-23-62-0700	NB-503	11-23-62-1715	11-29-62-1045	11-29-62-1600	12-1-62 -1910	
498	San Juan	Fort Johnson	Scarborough	11-21-62-2235	11-29-62-0800	NB-505	11-30-62-1615	12-6-62 -1145	12-9-62 -1405	12-11-62-1910	
500	Florida	W.T.Coppedge III	Hightower	12-2-62 -1630	12-9-62 -1330	NB-507	12-9-62 -2300	-----	-----	12-16-62-1125	
502	Georgia	Fort Moultrie	Jenkins	12-5-62 -1350	12-12-62-0730	NB-509	12-12-62-1815	12-18-62-1000	12-18-62-1730	12-20-62-0825	
504	Carolina	John E. Berwind	Pineiro	12-6-62 -1610	12-13-62-0900	NB-511	12-15-62-1700	*12-21-62-1630	12-21-62-1620	12-24-62-0615	*Miami - In With John C. Berwind Out With Fort Johnson
506	San Juan	Fort Sumter	Scott	12-13-62-1155	12-20-62-0900	NB-513	12-20-62-1830	-----	-----	12-26-62-2310	
508	Florida	W.T.Coppedge III	Dougherty	12-16-62-2130	12-24-62-0800	NB-515	12-24-62-1545	12-30-62-0930	12-30-62-1415	1-2-63 -0635	(Due to Rough Weather - Tug Hawser Parted - Barge Anchored Until 12-31-62 at Sea Until Repairs Made)
510	Georgia	Fort Moultrie	Wasson	12-20-62-1915	12-29-62-0800	NB-517	12-29-62-1745	1-4-63 -1200	1-4-63 -1615	1-5-63 -1305	
512	Carolina	Fort Johnson	J. French	12-24-62-1735	1-2-63 -0800	NB-519	1-3-63 -1545	1-9-63 -1500	1-9-63 -2015	1-11-63 -1130	*SB Miami Cargo Transferred to SB-518 at Jax (SB Miami-520)
514	San Juan	Fort Sumter	Scott	12-31-62-1705	1-8-63 -0800	NB-521	1-10-63 -1745	1-16-63 -0735	1-16-63 -1710	1-18-63 -1500	*Miami - SB-520B

Arrival And Departure Schedule
Tugs and Barges - 1963

FMC Docket No. 1187

Exhibit (1-)

Trip No.	Barge	Tug	Captain	Departure Jacksonville	Arrival San Juan	North bound-Trip No.	Departure San Juan	Arrival Miami	Departure Miami	Arrival Jacksonville	Remarks
516	Florida	W.T.Coppedge III	Dougherty	1-5-63 -0645	1-14-63 -0800	523	1-14-63 -1700	1-19-63 -1700	1-19-63 -2310	1-21-63 -1510	
518	Georgia	Fort Moultrie	Jenkins	1-11-63 -2045	1-19-63 -0900	525	1-19-63 -1845	1-25-63 -0815	1-25-63 -1515	1-27-63 -1030	Cargo from Miami (58-520) Transferred At Jacksonville
520B	San Juan	Fort Sumter	Scott	1-19-63 -1440	1-26-63 -1700	527	1-27-63 -1815	2-2-63 -0700	2-2-63 -1515	2-5-63 -1815	*Fort Sumter In Trouble On Trip to Jax
522	Florida	W.T.Coppedge III	Hightower	1-22-63 -1720	1-30-63 -0830	529	1-31-63 -1700	2-6-63 -1130	2-6-63 -1900	2-8-63 -1020	*Due to Accident Aboard Tug Returned to Port - Departed 2145
524	Carolina	Fort Johnson	Scarborough	1-25-63 -1640	2-2-63 -0700	531	2-2-63 -2000	2-7-63 -1645	2-8-63 -1200	2-10-63 -0655	
526	Georgia	Fort Moultrie	Jenkins	1-29-63 -0935	2-6-63 -0730	533	2-6-63 -1845	2-12-63 -1100	2-13-63 -1320	2-15-63 -0925	
528	San Juan	Fort Sumter	W. C. Hurley	2-6-63 -2005	2-13-63 -0800	535	2-13-63 -1830	2-18-63 -1930	2-19-63 -1400	2-21-63 -0645	
530	Florida	W.T.Coppedge III	Dougherty	2-8-63 -2055	2-15-63 -0700	537	2-15-63 -2100	2-20-63 -1915	2-21-63 -1330	2-23-63 -0745	
532	Carolina	Fort Johnson	Scarborough	2-11-63 -1800	2-18-63 -0800	539	2-19-63 -1615	-----	-----	2-28-63 -0525	Due to Trouble With Fort Johnson No Stop Made at Miami
534	Georgia	Fort Moultrie	Wasson	2-15-63 -1900	2-23-63 -0715	541	2-25-63 -1745	3-3-63 -1500	3-4-63 -0945	3-6-63 -0525	
536	San Juan	Fort Sumter	Scott	2-22-63 -1455	3-1-63 -0730	543	3-1-63 -1745	-----	-----	3-7-63 -1320	Adjust Schedule - Sent Directly to Jax From San Juan
538	Florida	W.T.Coppedge III	Dougherty	2-23-63 -1730	3-4-63 -0700	545	3-5-63 -1645	3-10-63 -1800	3-11-63 -1730	3-13-63 -0710	
540	Carolina	Fort Johnson	Wamsley	3-1-63 -1615	3-9-63 -0900	547	3-10-63 -1000	3-15-63 -2045	3-16-63 -1230	3-18-63 -0200	
542	Georgia	Fort Moultrie	Jenkins	3-7-63 -1215	3-15-63 -1100	549	3-16-63 -1200	3-22-63 -1215	3-23-63 -0920	3-25-63 -0120	
544	San Juan	Fort Sumter	Scott	3-8-63 -1640	3-16-63 -1300	551	3-19-63 -1700	3-24-63 -1840	3-25-63 -1840	3-27-63 -0700	
546	Florida	W.T.Coppedge III	Hightower	3-13-63 -1725	3-20-63 -1435	553	3-21-63 -1750	3-26-63 -2130	3-27-63 -1350	3-30-63 -0801	
548	Carolina	Fort Moultrie	Jenkins	3-25-63 -1200	4-2-63 -0700	555	4-2-63 -1800	4-8-63 -1500	4-9-63 -1230	4-11-63 -0655	Departure From Jax Delayed Account Tug Trouble (Fort Johnson)

Arrival and Departure Schedule
Tugs and Barges 1963

FMC Docket No. 1187
Exhibit (1-)

Trip No.	Barge	Tug	Captain	Departure Jacksonville	Arrival San Juan	Northbound Trip No.	Departure San Juan	Arrival Miami	Departure Miami	Arrival Jacksonville	Remarks
550	Georgia	Fort Sumter	Hurley	2-27-63 -1200	4-3-63 -1130	557	4-4-63 -0015	-----	-----	4-9-63 -2345	
552	San Juan	Fort Johnson	Scarborough	3-29-63 -1430	4-7-63 -0800	559	4-10-63 -1700	4-15-63 -1605	4-16-63 -1740	4-18-63 -0639	Positions Reversed Account Coppedge Overtook Fort Johnson On Way Down
554	Florida	W.T. Coppedge III	Dougherty	3-30-63 -1550	4-7-63 -0800	561	4-7-63 -1700	-----	-----	4-13-63 -2210	
556	Carolina	Fort Moultrie	Wasson	4-12-63 -1700	4-19-63 -2030	563	4-20-63 -1730	4-26-63 -0615	4-26-63 -1715	4-28-63 -1230	Northbound Voyages Reversed Account Georgia Sent Direct to Jax on Last Trip
558	Georgia	Fort Sumter	Scott	4-10-63 -2010	4-17-63 -1530	565	4-18-63 -1730	-----	-----	4-24-63 -2230	
560	Florida	W.T. Coppedge III	Hightower	4-15-63 -1640	4-22-63 -1730	567	4-23-63 -1815	4-28-63 -1730	4-29-63 -1400	5-1-63 -0410	
562	San Juan	Fort Johnson	Scarborough	4-19-63 -1330	4-25-63 -2100	569	4-26-63 -1900	5-1-63 -1800	5-2-63 -1515	5-4-63 -0645	
564	Georgia	Fort Sumter	Scott	4-25-63 -1930	5-3-63 -1800	571	5-4-63 -1500	5-10-63 -1100	5-10-63 -1745	5-12-63 -1135	
566	Carolina	Fort Moultrie	Jenkins	4-29-63 -1730	5-7-63 -2000	573	5-8-63 -1915	5-14-63 -0900	5-14-63 -1730	5-16-63 -1145	
568	Florida	W.T. Coppedge III	Hightower	5-1-63 -1610	5-9-63 -0700	575	5-9-63 -1700	5-15-63 -1740	5-16-63 -1500	5-18-63 -0355	
570	San Juan	Fort Johnson	Wassley	5-6-63 -1640	5-12-63 -2030	577	5-14-63 -1715	5-19-63 -1115	5-20-63 -2130	5-22-63 -0755	
572	Georgia	Fort Sumter	Hurley	5-13-63 -1645	5-21-63 -0600	579	5-21-63 -1745	5-27-63 -1600	5-28-63 -1600	5-30-63 -1305	Into Drydock Miami SB-580 Cargo Transferred to Carolina SB-582
574	Carolina	Fort Moultrie	Jenkins	5-16-63 -2055	5-24-63 -2330	581	5-25-63 -1545	-----	-----	5-31-63 -1950	
576	Florida	W.T. Coppedge III	Hightower	5-20-63 -1715	5-28-63 -0800	583	5-28-63 -1725	6-3-63 -0715	6-4-63 -1930	6-6-63 -0830	
578	San Juan	Fort Johnson	Scarborough	5-25-63 -0500	6-1-63 -1700	585	6-3-63 -1625	6-9-63 -1615	6-10-63 -1800	6-12-63 -0655	
580						---					
582	Carolina	Fort Moultrie	Wasson	6-3-63 -0520	6-10-63 -2010	587	6-11-63 -1815	6-17-63 -1200	6-17-63 -2110	6-19-63 -1230	

Arrival And Departure Schedule
Tugs and Barges - 1963

Trip No.	Barge	Tug	Captain	Departure Jacksonville	Arrival San Juan	Northbound Trip No.	Departure San Juan	Arrival Miami	Departure Miami	Arrival Jacksonville	Remarks
584	Florida	W.T.Coppedge III	Hightower	6-6-63 -1725	6-13-63 -1200	589	6-14-63 -1600	6-19-63 -2030	6-21-63 -1445	6-23-63 -0100	
586	San Juan	Fort Johnson	Scarborough	6-12-63 -1800	6-19-63 -2010	591	6-20-63 -1730	6-25-63 -1145	6-26-63 -1800	6-28-63 -0700	
588	Carolina	Fort Moultrie	Jenkins	6-19-63 -2000	6-27-63 -1700	593	6-28-63 -1700	7-4-63 -1110	7-5-63 -2030	7-7-63 -1000	
590	Florida	Coppedge III	Dougherty	6-24-63 -1900	7-1-63 -1630	595	7-2-63 -1630	7-8-63 -0615	7-9-63 -1815	7-11-63 -0700	
592	Georgia	Fort Sumter	Scott	6-28-63 -1600	7-5-63 -1700	597	7-8-63 -1815	7-13-63 -1830	7-15-63 -1520	7-17-63 -0725	
592B	San Juan	Fort Johnson	Wamsley	7-3-63 -1610	7-10-63 -0700	599	7-11-63 -1445	7-16-63 -0830	7-16-63 -1850	7-18-63 -0630	
594	Carolina	Fort Moultrie	Jenkins	7-8-63 -1825	7-16-63 -2200	601	7-19-63 -0815	7-24-63 -1800	7-26-63 -1340	7-28-63 -0925	
596	Florida	W.T.Coppedge III	Dougherty	7-11-63 -1805	7-18-63 -2015	603	7-22-63 -1655	-----	-----	7-28-63 -1935	
598	Georgia	Fort Sumter	Scott	7-17-63 -1745	7-24-63 -2300	605	7-26-63 -1730	7-31-63 -1750	8-1-63 -1935	8-3-63 -0800	
600	San Juan	Fort Johnson	Scarborough	7-22-63 -1545	7-30-63 -0700	607	8-1-63 -0815	8-6-63 -0615	8-6-63 -1800	8-8-63 -0745	
602	Carolina	W.T.Coppedge III	Hightower	7-29-63 -1645	8-8-63 -0500	609	8-8-63 -2000	8-13-63 -1630	8-14-63 -2035	8-16-63 -0810	
604	Georgia	Fort Sumter	Hurley	8-3-63 -1845	8-10-63 -1945	611	8-13-63 -1820	8-18-63 -2045	8-20-63 -1745	8-22-63 -0835	
606	Florida	Fort Moultrie	Wasson	8-12-63 -1730	8-21-63 -0730	613	8-23-63 -0830	8-29-63 -1830	8-30-63 -2030	9-1-63 -1725	
608	San Juan	Fort Johnson	Wamsley	8-14-63 -2000	8-15-63 -1500	615	8-16-63 -1740	8-21-63 -1130	8-23-63 -1430	8-25-63 -0340	
610	Carolina	W.T.Coppedge III	Dougherty	8-16-63 -1755	8-23-63 -0800	617	8-29-63 -0900	9-3-63 -1245	9-4-63 -1710	9-6-63 -0710	
612	Georgia	Fort Sumter	Scott	8-23-63 -1205	8-30-63 -0800	619	9-4-63 -1520	9-10-63 -0735	9-10-63 -1700	9-12-63 -1150	
614	San Juan	Fort Johnson	Wamsley	8-27-63 -1600	9-4-63 -2100	621	9-6-63 -1640	9-11-63 -1220	9-12-63 -1700	9-14-63 -0630	

FWC Docket No. 1187
Exhibit No. (11-)

FMC Docket No. 1187
Exhibit No. (1-)

Arrival and Departure Schedule
Tugs and Barges - 1963

Trip No.	Barge	Tug	Captain	Departure Jacksonville	Arrival Northbound San Juan Trip No.	Departure San Juan	Arrival Miami	Departure Miami	Arrival Jacksonville	Remarks
616	Florida	Fort Moultrie	Jenkins	9-3-63 -1625	9-11-63 -0820 623	9-12-63 -1640	9-18-63 -0630	9-18-63 -1700	9-20-63 -1035	
618	Carolina	W.T.Coppedge III	Dougherty	9-6-63 -1650	9-13-63 -0835 625	9-16-63 -1700	9-21-63 -1130	9-21-63 -1725	9-23-63 -1150	
620	Georgia	Fort Sumter	Scott	9-13-63 -1535	9-21-63 -0300 627	9-21-63 -1700	9-27-63 -1205	9-27-63 -1935	9-29-63 -1435	
622	San Juan	Fort Johnson	Scarborough	9-17-63 -0540	9-23-63 -2200 629	9-27-63 -1035	10-2-63 -1730	10-3-63 -1815	10-6-63 -2055	
624	Florida	Fort Moultrie	Jenkins	9-21-63 -0725	9-30-63 -2400 631	10-3-63 -0945	10-14-63 -0715	10-14-63 -1810	10-17-63 -1005	Parted Hawser on NB trip Due to Hurricane "Flora" Barge Florida Adrift From 10 P.M. 10-8-63 until 3:30 P.M. 10-9-63 - No Damage
626	Carolina	W.T.Coppedge III	Hightower	9-28-63 -0935	10-5-63 -1400 633	10-6-63 -1230	-----	-----	10-15-63 -0725	
628	Georgia	Fort Sumter	Hurley	9-30-63 -1825	10-13-63 -2000 635	10-14-63 -1945	10-20-63 -0830	10-20-63 -1715	10-22-63 -1735	
630	San Juan	GATCO Alabama	Scarborough	10-10-63 -0825	10-18-63 -1300 637	10-19-63 -1430	10-25-63 -0600	10-25-63 -1915	10-27-63 -2020	
634	Carolina	W.T.Coppedge III	Dougherty	10-15-63 -1835	10-22-63 -1350 639	10-22-63 -2215	10-27-63 -1815	10-28-63 -1440	10-30-63 -1825	
632	Florida	Fort Moultrie	Wasson	10-18-63 -1800	10-25-63 -1500 641	10-28-63 -0900	11-7-63 -1845	11-8-63 -0515	11-10-63 -0210	Tug Broke Down Towed to Nassau - Picked Up By GATCO Alabama
636	Georgia	Fort Sumter	Scott	10-26-63 -0915	11-2-63 -2130 643	11-3-63 -1600	-----	-----	11-10-63 -1530	
638	San Juan	Fort Johnson	Wassley	10-28-63 -2235	11-4-63 -0930 645	11-5-63 -1700	-----	-----	11-12-63 -0630	
640	Carolina	W.T.Coppedge III	Dougherty	10-31-63 -1815	11-7-63 -1800 647	11-8-63 -1815	11-13-63 -2100	11-14-63 -1615	11-16-63 -1645	
642	Florida	GATCO Alabama	Earl Cannon	11-10-63 -1435	11-18-63 -1300 649	11-19-63 -0800	11-25-63 -0630	11-25-63 -1450	11-27-63 -0810	
644	Georgia	Fort Johnson	Scarborough	11-12-63 -1130	11-19-63 -0100 651	11-19-63 -1730	-----	-----	11-25-63 -2355	
646	San Juan	W.T.Coppedge, Jr.	Scott	11-13-63 -1745	11-22-63 -0630 653	11-22-63 -1845	11-28-63 -0600	11-29-63 -1100	12-2-63 -2245	Departed Miami For Nassau With Special Cargo - Racing Cars*
648	Carolina	W.T.Coppedge III	Hightower	11-17-63 -1730	11-25-63 -2015 655	11-27-63 -1715	12-3-63 -0630	12-3-63 -1745	12-5-63 -0845	

Arrival and Departure Schedule
Tugs and Barges - 1963

FMC Docket No. 1187
Exhibit No. (1-)

Trip No.	Barge	Tug	Captain	Departure Jacksonville	Arrival Northbound San Juan	Trip No.	Departure San Juan	Arrival Miami	Departure Miami	Arrival Jacksonville	Remarks
652	Georgia	Fort Johnson	Wamsley	11-26-63-1930	12-3-63 -0900	657	12-3-63 -1845	-----	-----	12-10-63-2000	
658X	Andros/Putnam	GATCO Alabama	Cannon	11-28-63-0535	12-6-63 -1150	659X	12-6-63 -2120	-----	-----	12-11-63-1900	(Returned From San Juan Empty)
650	Florida	Fort Moultrie	Jenkins	11-27-63-2115	12-5-63 -0300	659	12-6-63 -1150	12-13-63-2110	12-14-63-1430	12-17-63-1030	(To Miami Via Nassau NB-659)
654	San Juan	W.T. Coppedge, Jr.	Hurley	12-3-63 -1725	12-10-63-1000	661	12-10-63-1900	12-16-63-0725	12-18-63-1040	12-20-63-1140	
656	Carolina	W.T. Coppedge III	Dougherty	12-5-63 -1955	12-12-63-1545	663	12-13-63-1810	-----	-----	12-20-63-2020	
658	Georgia	Fort Johnson	Wamsley	12-11-63-2115	12-18-63-2200	665	12-19-63-1800	12-25-63-0900	12-26-63-1600	12-28-63-0650	
658XBC	Andros/Putnam	GATCO Alabama	W. Johnson	12-14-63-2030	12-26-63-1130	665XBC	12-28-63-0800	-----	-----	1-3-64 -1800	
658XA	Investment#1	Braton	R.C. Welch	12-13-63-2000	12-20-63-1630	665XA	12-25-63-1115	-----	-----	12-31-63-1300	
660	Florida	Fort Moultrie	Jenkins	12-18-63-0910	12-26-63-0800	667	12-27-63-1300	1-2-64 -1300	1-2-64 -1950	1-4-64 -1425	
662	San Juan	W.T. Coppedge, Jr.	Scott	12-20-63-1940	12-28-63-1400	669	12-29-63-1330	-----	-----	1-5-64 -1430	
664	Carolina	W.T. Coppedge III	Dougherty	12-23-63-1730	12-30-63-0800	671	12-31-63-1600	1-5-64 -1315	1-6-64 -1515	1-8-64 -0640	
666	Georgia	Fort Johnson	Wamsley	12-28-63-1650	1-4-64 -2330	673	1-5-64 -1845	1-10-64 -1850	1-11-64 -1510	1-13-64 -0650	



EXHIBIT 27

F.M.C. DOCKET NO. 1182
Page 1 of 1TMT TRAILER FERRY, INC.
(C. GORDON ANDERSON, TRUSTEE)STATEMENT SHOWING SOUTHBOUND TMT REVENUE FROM MAJOR
COMMODITIES CARRIED BY SEA-LAND - 1964

<u>TMT CODE</u>	<u>DESCRIPTION</u>	<u>T.M.T. REVENUE</u>
733-0	Dry Goods, N.O.S.	\$ 17,100
225	Poultry, frozen	-0-
217	Meat, in barrels, boxes	-0-
697	Bottles, glass	2,000
717	Cigarettes	-0-
From 665	Cleansing or Facial Paper	-0-
727	Cotton Piece Goods	800
85	Potatoes	-0-
799	Cargo, N.O.S.	66,500
29	Tobacco, Leaf	4,900
783	Boxes, Cardboard	14,600
789	Detergents, powder	10,000
From 737	Sandals	-0-
779	Cans, Tin, K.D.	600
689	Plumbing Materials	17,100
731	Yarn, synthetic	16,200
547	Paints, N.O.S.	24,000
---	Freight, All Kinds, TL	-0-
Various	Refrigerated Cargo (ice cream, citrus concentrate, eggs)	8,700
69	Fruit, fresh, not frozen	-0-
661	Wrapping Kraft & Other	-0-
---	Catalysts, spent	-0-
679	Sash, Door (includes all Building Materials)	45,800
553	Medicines (includes pharmaceuticals and cosmetics)	25,100
781	Barrels, empty	1,000

EXHIBIT 35

Docket No. 1182
Exhibit No. 25

SUMMARY OF TRADE BETWEEN
UNITED STATES AND PUERTO RICO
1963 - 1964

Prepared by the Office of Transport Economics
Federal Maritime Commission
February 15, 1966

SUMMARY OF TRADE BETWEEN
UNITED STATES AND PUERTO RICO
1953 - 1964
Dollar Data

Trade between the United States and Puerto Rico is growing rapidly, in both directions. . In the 12-year period, 1953-64, trade from the United States to Puerto Rico increased by about \$763 million, or about 162 percent. In this same 12-year period, trade from Puerto Rico to the United States increased by about \$557 million in Puerto Rican products alone, or about 176 percent. The more rapid rise in the volume of trade from Puerto Rico to the United States, than in the other direction, had the effect of bringing the dollar volume of this exchange more nearly into balance: in 1953, the trade from Puerto Rico was about 67 percent of the outbound trade, and in 1964, the trade from Puerto Rico had risen to about 71 percent of the outbound trade. Thus, in the past 12 years, merchandise carriers have had an opportunity to share in a trade which is increasing substantially in volume, and is coming closer to balance in the value of inbound and outbound cargoes.

TEXT TABLE 1

Trade Between United States and Puerto Rico:
12-year, Import-Export Ratios

To Puerto Rico			From Puerto Rico			Import/Export		
Total Merchandise Shipments			Total Shipments Shipments of Puerto Rican Products			Total Import Shipments Puerto Rican Product Shipments		
\$millions	index 1953-100		\$ millions	index 1953-100		\$millions	index 1953-100	percent
1953	471.4	100.	324.7	100.	316.4	100.	68.9	67.1
1954	484.6	103.	335.5	103.	324.1	102.	69.2	66.9
1955	548.0	116.	368.7	114.	357.5	113.	67.3	65.2
1956	595.4	126.	415.4	128.	404.4	128.	69.8	67.9
1957	640.3	136.	430.4	133.	419.5	133.	67.2	65.5
1958	629.9	134.	452.2	139.	438.3	139.	71.8	69.6
1959	718.6	152.	559.2	172.	542.4	171.	77.8	75.5
1960	760.9	161.	588.4	181.	570.5	180.	77.3	75.0
1961	836.8	178.	697.7	215.	674.4	213.	83.4	80.6
1962	931.6	198.	789.1	243.	750.9	237.	84.7	80.6
1963	984.5	209.	826.6	255.	804.9	254.	85.0	81.8
1964	1,233.9	262.	900.5	277.	873.2	276.	73.0	70.8

Source: Basic data from Bureau of the Census FT 800 reports

The relative decline in imports for 1964 was due to a divergent increase in exports for that year, particularly in the category of machinery and vehicles.

TEXT TABLE 2

Changes in Trade Volumes, 1953-64, United States
and Puerto Rico (\$millions)

	To Puerto Rico (Total Merchandise Shipments)		From Puerto Rico (Shipments of Puerto Rican Products)	
		% of total		% of total
Total	763	100	557	100
00 Animals, & animal products, edible	59	8	47	8
0 Animals, & animal products, inedible	10	1	35	6
1 Vegetable food products & beverages	47	6	- 14	(3)
2 Vegetable products, inedible, except fibers and wood	76	10	119	21
3 Textile fibers & manufactures	118	15	147	26
4 Wood & paper	36	5	-1	--
5 Nonmetallic minerals	3	--	65	12
6 Metals & manufactures, except machinery and vehicles	72	9	16	3
7 Machinery and vehicles	223	29	68	12
8 Chemicals and related products	56	7	42	8
9 Miscellaneous	65	9	33	6

Note: Totals will not add exactly because of rounding

Source: Basic data from Bureau of the Census FT 800 reports

The increase in exports from the United States to Puerto Rico, 1953-64, was shared by all major commodity groups, with the largest increases in the groups listed below. The largest single increase, which accounted for about 30 percent of the total rise, was in machinery and vehicles, which increased 223 million - automobiles, new and used, accounted for \$36 million of the increase, or about 16 percent of the group total.

TEXT TABLE 3

	\$ Millions		
	1953	1964	Change
7 Machinery & vehicles, total	78.4	301.3	222.9
7115 Elec. Household refrigerators & freezers	2.8	5.9	3.1
7120 Household refrigeration systems & parts, nec.	0.1	0.2	0.1
7135 Electric Household laundry eqt.	0.7	4.1	3.4
7165 Radio & TV receiving sets	1.7	10.2	8.5
7170 Electronic eqt. & parts, nec	1.1	9.8	8.7
7185 Telephone apparatus	0.8	2.7	1.9
7240 Elec. Mach. & apparatus, nec	4.5	15.2	10.7
(including testing instruments, portable tools, misc. household appliances misc. pole lines hardware)			

7295 Construction & maintenance equipt. nec.	1.4	12.7	11.3
7310 Materials handling equipt. & parts, nec.	0.8	4.9	4.1
7490 Metalworking machinery & parts, nec.	1.1	9.7	8.6
7685 Air conditioning & refrig. equip. nec.	1.0	6.6	5.6
7785 Industrial machinery & parts, nec.	5.2	19.8	14.6
7890 Tractors, nec and parts	1.1	5.5	4.4
7905-15 Trucks, gas	6.2	22.1	15.9
7930 Passenger cars, new	17.4	41.6	24.2
7935 Passenger cars, used	0.5	12.4	11.9
7940 Auto replacement parts	2.3	9.7	7.4
7965 Auto parts Equipt. nec.	0.4	3.4	3.0

Source: Basic data from Bureau of Census FT 800 reports

147.4

Textile fibers and manufactures, largely semifinished and finished products, increased by about \$118 million.

TEXT TABLE 4

\$ Millions

	1953	1964	Change
3 Textile fibers & Manufactures, total	80.8	198.4	117.6
3052 Drills, Twills, & Sateen, finished	0.8	7.8	7.0
3065 Cotton carded broadcloth & cheese-cloth, finished	0.4	4.1	3.7
3070 Cotton Print cloth, finished	2.8	4.1	1.3
3102 Cotton fabrics, nec.	0.9	4.4	3.5
3120 Cotton knit wearing apparel, nec.	1.6	4.9	3.3
3130 Cotton woven shirts, except work shirts	1.0	3.9	2.9
3135 Cotton dresses & ensembles, woven fabrics	1.3	7.4	6.1
3160 Cotton wearing apparel, nec.	2.0	7.3	5.3
3199 Cotton manuf. nec.	14.3	23.0	8.7
3615 Wool yarn	2.1	6.4	4.3
3820 Acetate filament yarn	1.8	5.0	3.2
3830 Synthetic knit fabrics in the piece	1.9	10.2	8.3
3895 Synthetic fibers & manufactures, nec. (includes yarns, broad woven fabrics, misc. boys & men's outerwear)	6.7	35.3	28.6
3920 Corsets, bras, & girdles, except rubber	0.7	2.6	1.9
3990 Textile Manufactures, nec.	1.9	7.9	6.0
			<u>94.1</u>

Basic data from Bureau of Census FT 800 reports

TEXT TABLE 5

		\$ Millions		
		1953	1964	Change
2	Vegetable products, inedible, except fibers & wood, total	13.9	89.9	76.0
2030	tires & casing, truck & bus	1.1	2.5	1.4
2035	" , passenger car	1.6	5.3	3.7
2095	Natural & synthetic rubber and manufactures, nec.	1.4	10.4	9.0
2610	cigarettes	6.7	15.1	8.4
2690	tobacco & manufactures, nec. (largely in cigar tobaccos)	1.0	47.3	46.3
				<u>68.8</u>

Basic data from Bureau of the Census FT 800 reports

Metals and manufactures, except machinery and vehicles, the large weight of which is in manufactured goods, rather than ores and scrap, increased by about \$72 million.

TEXT TABLE 6

		\$Millions		
		1953	1964	Change
6	metals & manufactures, except machinery & vehicles, total	29.2	101.1	71.9
6045	Steel Sheets, galvanized	1.7	1.2	- 0.5
6050	Tin mill products	0.2	5.1	4.9
6135	Metal cans & parts, finished & unfinished	1.2	6.2	5.0
6140	Metal furniture & fixtures, nec.	2.8	8.5	5.7
6145	Cooking & heating stoves, exc. elec.	1.1	3.2	2.1
6165	Metal tools, nec.	0.6	3.0	2.4
6195	Hardware, nec.	0.9	2.9	2.0
6225	Fabricated steel products, nec.	0.8	6.6	5.8
6260	Metal manufactures, nec. (includes pipe fittings, gas cylinders, wire fabric)	3.8	16.9	13.1
6280	Aluminum ores, semifabricated forms	0.4	4.8	4.4
				<u>44.9</u>

Source: Basic data from Bureau of Census FT 800 reports

In summary, the increase in trade from the United States to Puerto Rico, of over three-quarters of a billion dollars over a 12-year period, has been spread over many commodities, with the emphasis being on relatively expensive, specialized, manufactured goods, finished or semifinished, rather than low-priced raw materials.

The increase in imports from Puerto Rico during the years 1953-1964 was evidenced in all major commodity groups with the exception of two: vegetable food products and beverages on the one hand, and wood and paper products on the other. In these two commodity groups, a decline of about \$15 million was attributable chiefly to the decreased traffic in raw sugar and green coffee, which were only partially offset by increased trade in manufactured products, such as refined sugar and rum.

The largest single increase was in textile fibers and manufactures, \$147 million, attributable to a large variety of items, but concentrated in sweaters, women's underwear and foundation garments.

TEXT TABLE 7

	\$Millions		
	1953	1964	Change
3 Textile fibers & manufactures	77.9	225.3	147.4
3230 Outerwear, cotton, men's & boys'	3.8	13.2	9.4
3690 Wool manufactures, nec.	1.9	2.8	0.9
3900 Women's underwear, man-made fibers, except rayon or acetate	0.7	23.2	22.5
3925 Sweaters, man-made fibers, except rayon or acetate	--	14.6	14.6
3960 Corsets, Brassieres, etc.	8.5	65.0	56.5
			<u>103.9</u>

Source: Basic data from Bureau of Census FT 800 reports

Inedible vegetable products, increased by about \$119 million, largely in tobacco and cigars.

TEXT TABLE 8

	\$Million		
	1953	1964	Change
2 Inedible vegetable products	15.5	134.1	118.6
2630 Leaf tobacco, stemmed, domestic	11.9	32.1	20.2
2650 Tobacco stems, scrap, etc.	2.1	14.8	12.7
2670 Cigars & Cheroots	0.6	66.7	66.1
			<u>99.0</u>

Source: Basic data from Bureau of the Census FT 800 reports

Machinery and vehicles increased \$68 million, largely in electric household appliances, and electric machinery and apparatus.

TEXT TABLE 9

	\$Millions		
	1953	1964	Change
7 Machinery & Vehicles	5.1	73.5	68.4
7300 Electric Household Appliances (1958)	24.9 <u>1/</u>	28.6	Not comparable
7600 Electric Machinery & apparatus	10.3 <u>1/</u>	4.1	" "

1/ 4-Digit group established this year.

Source: Basic data from Bureau of Census FT 800 reports.

Machinery and vehicles increased \$68 million, largely in electric household appliances, and electric machinery and apparatus.

TEXT TABLE 9

	\$ Millions		
	1953	1964	Change
7 Machinery & Vehicles	5.1	73.5	68.4
7300 Electric Household Appliances (1958)	24.9 <u>1/</u>	28.6	Not comparable
7600 Electric Machinery & Apparatus	10.3 <u>1/</u>	4.1	" "

1/ 4-Digit group established this year

Source: Basic data from Bureau of Census FT 800 reports

Nonmetallic minerals increased \$65 million, largely in petroleum products, and cement.

TEXT TABLE 10

	\$ Millions		
	1953	1964	Change
5 Nonmetallic Minerals	6.0	70.8	64.8
5300 Cement, Clay & Glass Products	2.4	8.5	6.1
5900 Nonmetallic minerals, nec.	1.8	59.2	57.4
			<u>63.5</u>

Source: Basic data from Bureau of the Census FT 800 reports

An indication of the contents of the "5900" group for the Calendar Year

1963 follows: Shipments in tankers, thousands of short tons, from Puerto Rico 1/ to U. S.

	1953	1963
Gasoline	0	1,141
Gas Oil and distillate fuel	0	254
Kerosene	0	3
Residual Fuel Oil	0	770
Lubricating oils and grease	0	6

1/ Includes Virgin Islands

Source: Maritime Administration, Domestic Oceanborne and Great Lakes Commerce of the United States, 1963, with Summary for 1954-1963 (published in March, 1965, this is the most recent report presently available).

In summary, the increase in trade from Puerto Rico to the United States, of over \$575 million in a 12-year period, like the trade in the other direction, has been spread over many commodities, with the emphasis being on relatively expensive, manufactured goods, rather than low-priced raw materials. The decline in the inbound trade from Puerto Rico in raw sugar is shown in the following tabulation of vegetable food products and beverages:

TEXT TABLE 11

	\$ Millions		
	1953	1954	Change
1 Vegetable food products & beverages	163.3	149.0	- 14.3
1630 Coffee green	5.3	3.2	- 2.1
1800 Cane sugar, raw	126.6	91.7	- 34.9
1810 Cane Sugar, refined	17.4	23.4	6.0
1920 Rum	4.7	11.5	6.8
1950 Other alcoholic beverages	-----	3.1	3.1
			- 21.1

Source: Basic data from Bureau of the Census FT 800 reports

Tonnage Data

There is no close correlation between value (dollar) data collected by the Census Bureau and volume (tonnage) data collected by the Corps of Engineers and published by the Maritime Administration. The most obvious reason for the difference is that a ton of electronic equipment, for example, will have a much higher value than a ton of a basic commodity, such as grain. This, and other reasons for differences in the trends of the two series will be discussed subsequently. However, there are also differences in the scope of the two series. Some of the differences most important for this analysis are:

Census data are for Puerto Rico alone; MA data include the Virgin Islands.

Since the bulk of the trade is with Puerto Rico, MA data are considered workable.

Census data do not include military shipments; MA data include military shipments on commercial vessels.

Census data do not include "personal effects," which can include automobiles.

Thus, Census data understate automobile traffic to the extent that the cars carried are in the possession of tourists, those changing place of residence, etc.

Maritime Administration data exclude shipments made in vessels of less than 1,000 tons, and in barges. The exclusion of barges seriously affects the adequacy of the data in the United States-Puerto Rico trade. Census data are for all means of transportation; MA data pertain to waterborne shipments alone. (The Puerto Rico Ports Authority estimates that in the 12 months ending June 30, 1963, air cargo to all destinations was about 22,000 short tons inbound, and 16,000 short tons outbound.)

Tonnage data for the calendar year 1964 have not yet been published by the Maritime Administration and the comparative changes in tonnage which follow are limited to the eleven-year period 1953-1963.

TANKERS

A substantial shift in the trade in petroleum products took place in the years 1953-1963. A trade which had been primarily outbound from the United States is now primarily inbound; in 1963 the tonnage carried by tankers from Puerto Rico to the United States was 126 percent greater than that carried by dry-cargo vessels.

DRY CARGO, 1963

A comparison of 1963 northbound and southbound liner tonnage shows a much greater imbalance than a comparison of total dollar trade. Inbound trade in 1963 was worth about 82 percent as much as outbound. Appendix Table 5, shows that for the same year the tonnage of inbound liner trade was approximately 20 percent of the outbound tonnage. The major reasons for this discrepancy are:

One, we are now discussing dry cargo alone, while the dollar figures encompass trade carried by both tankers and dry cargo vessels. In 1963, the tanker trade southbound was a negligible 56,000 tons; northbound it was about 2,387,000 tons. This trade was largely in petroleum, and petroleum accounts for most of the northbound "nonmetallic minerals, nec," valued at about \$57 million, or 7 percent of Puerto Rico's shipments to the United States.

Two, though Puerto Rico is industrializing and there is a marked increase in her exports of manufactured products, a large proportion of her dry-cargo shipments is still in items such as sugar, which lend themselves to bulk, irregular carriage. Sugar accounted for about 17 percent of the value of Puerto Rican shipments, and about 54 percent of the tonnage. This carriage has been largely lost by liners, a point which will be discussed subsequently.

Three, the unmeasurable southbound movement of military equipment on commercial vessels.

Four, the light-weight, high-value of much of Puerto Rico's export trade.

In 1963, textile fibers and manufactures, which is largely in such items as sweaters, women's underwear and foundation garments, were valued at \$139 million, cigars were valued at \$39 million; these two groups alone were worth \$238 million, or 30 percent of the total value of Puerto Rican products shipped to the United States. Some idea of the southbound liner trade can be derived from these data: 1963 shipments of metals and manufactures were \$78 million, and machinery and vehicles were valued at \$229 million. These two examples alone were worth \$307 million, or 31 percent of the total value of U. S. products shipped to Puerto Rico.

DRY CARGO, 1953-63

In the years 1953-63, total dry cargo tonnage to Puerto Rico increased 28 percent, and the liner trade increased 8 percent. The much slower rise in the liner trade is attributable to the substantial growth in volume of industrial and irregular carriers. The most important cargoes of irregulars are wheat, corn, rice, fertilizer and fertilizer materials, and assorted flours and feeds. With the exception of fertilizers and fertilizer materials, the irregulars increased their carriage of these commodities from nothing or near nothing to substantial quantities. For example, between 1953 and 1963, rice cargoes to Puerto Rico increased from 132,000 to 168,000 tons; irregulars increased their share in this carriage from 2,000 tons (1.5%) to 95,000 tons (57%). Shipments of corn increased from nothing to 72,000 tons, of which 69,000 tons were carried by irregulars in 1963. Wheat cargoes increased from nothing to 117,000 tons, all carried by irregulars in 1963. Industrial and irregular carriers increased their share of the total United States-Puerto Rico trade, 1953-62, from 6 percent to 21 percent.

The tonnage from Puerto Rico, over this 11-year period, decreased about 26 percent, largely because of a decline in shipments of sugar of about 561,000 tons, or 49 percent, which more than offset increases in most other items.

The liner trade has dropped drastically over the period, and even in the five most recent years has displayed an erratic performance in the range of 276-364,000 tons. The decline in liner tonnage is attributable in large part

to loss of the sugar trade. While the total tonnage of sugar was declining by 561,000 tons, sugar cargoes of the irregulars increased from nothing to 512,000 tons. The same trend can be described another way: in 1953, liners carried all of a 1.1 million ton sugar movement; by 1963 they were carrying 11 percent of a 573,000 ton movement. The other item moving in quantity from Puerto Rico to the United States is cement. The story here is similar, though the cement trade was growing over this period, not contracting: in 1953, irregulars carried 5,000 of 127,000 tons; by 1962, they were carrying 100 percent of a cement movement of 268,000 tons.

In summary, the irregulars have captured from the liners most of the carriage of the bulk, low-value-per-ton commodities. Since the northbound movement of dry-cargo bulk commodities is greater than the southbound movement the northbound liner trade was in a position to lose more to the irregulars and did in fact suffer more from their inroads. In 1963, irregulars carried 781,000 tons, or 74 percent of the northbound movement, as contrasted with 355,000 tons, or 21 percent of the southbound.



APPENDIX TABLE 1

SHIPMENTS TO PUERTO RICO FROM UNITED STATES
(Millions of Dollars)

"Q" NUMBER		1953	1954	1955	1956	1957	1958	1959	1960	1961	1962	1963	1964
	Total Merchandise Shipments	471.4	484.6	548.0	595.4	640.3	629.9	718.6	760.9	836.8	931.5	984.4	1,233.9
00	Animal and Animal Products, Edible	52.1	53.9	56.7	59.4	65.3	69.0	72.1	68.7	76.9	86.6	89.0	110.7
0	Animal and Animal Products, Inedible	21.9	19.8	20.4	23.7	23.1	24.2	29.6	30.6	31.6	34.3	30.9	31.4
1	Vegetable-Food Products and Beverages	84.0	82.0	84.8	84.8	94.5	88.5	93.4	94.0	99.8	98.6	110.4	130.5
2	Vegetable Products, Inedible, except Fiber and Wood	13.9	15.8	20.5	23.2	30.5	33.6	40.7	46.0	60.7	64.3	61.5	89.9
2 610	Cigaretts	6.7	6.2	7.1	7.3	8.4	8.9	10.1	10.3	11.5	13.2	12.9	15.1
2 690	Tobacco and Manufactures, NEC	1.0	2.9	5.4	6.4	10.9	12.5	16.9	22.5	33.3	31.3	27.4	47.3
3	Textile Fibers and Manufactures	80.8	79.6	90.1	98.7	104.3	100.3	120.9	121.3	138.5	143.8	163.4	198.4
4	Wood and Paper	22.6	19.9	23.3	28.0	28.8	27.2	31.4	32.9	37.1	44.3	45.4	58.2
5	Nonmetallic Minerals	31.6	30.8	34.2	29.1	28.8	22.5	26.2	26.2	26.0	27.8	28.2	34.9
015-5095	Petroleum and Products	20.0	10.0	20.0	13.0	13.0	7.0	7.0	5.0	4.0	5.0	5.1	5.4
6	Metals and Manufactures, except Machinery and Vehicles	29.2	32.0	42.2	48.9	52.3	48.0	53.3	58.8	62.5	71.8	77.5	101.1
7	Machinery and Vehicles	78.4	89.6	99.9	113.8	123.0	124.6	144.5	171.9	179.7	220.9	229.3	301.3
7 930	Passenger Cars, New	17.4	16.3	17.4	11.3	12.5	12.6	16.2	25.2	23.3	30.6	32.8	41.6
7 935	Passenger Cars, Used	.5	.7	.9	1.1	2.1	2.3	4.3	6.5	8.2	10.6	11.7	12.4
930,7935	Cars, New and Used	17.9	17.0	18.1	12.4	14.6	14.9	20.5	31.7	31.5	41.2	44.5	54.0
905-7935	Cars, Trucks and Busses	24.3	24.9	27.4	21.1	24.8	23.6	30.2	46.0	45.7	60.4	64.4	80.0
8	Chemicals and Related Products	29.9	29.8	40.9	45.1	48.6	51.6	58.2	59.2	65.2	71.6	71.8	85.6
9	Miscellaneous	26.9	31.4	35.0	40.5	41.2	40.2	48.3	51.3	58.8	67.5	77.0	91.8

Source: Basic data from Bureau of the Census, FT 800-Report

APPENDIX TABLE 2

SHIPMENTS FROM PUERTO RICO TO UNITED STATES
(Millions of Dollars)

		1953	1954	1955	1956	1957	1958	1959	1960	1961	1962	1963	1964
	Total, Puerto Rican Products	316.4	324.1	357.5	404.4	419.5	438.3	542.4	570.5	674.4	750.9	804.9	873.2
00	Animals, & Animal Products, Edible	.7	1.9	2.3	2.8	5.7	6.8	10.8	14.6	20.6	34.0	37.8	47.6
0	Animals, & Animal Products, Inedible	11.1	9.8	11.7	14.4	15.0	18.7	27.6	28.0	30.8	39.7	41.7	46.3
0390	All other footwear	2.9	3.5	5.5	5.9	6.5	7.0	9.7	10.6	10.6	14.7	17.5	23.0
0540	Leather cardcases, purses, etc.	.6	.8	1.5	2.1	3.2	4.0	6.4	7.1	9.3	12.3	13.3	11.7
1	Vegetable food products and Beverages	163.3	144.4	151.0	148.6	125.8	119.0	138.5	134.5	148.1	151.8	178.3	149.0
1800	Cane Sugar, Raw	126.6	106.0	116.0	112.6	90.6	81.9	100.4	90.9	100.2	97.1	112.5	91.7
1810	Cane Sugar, Refined	17.4	17.7	18.4	16.6	18.7	18.1	20.1	22.8	22.4	22.8	29.2	23.4
1920	Rum	4.7	4.5	5.0	5.0	6.1	6.2	7.0	7.3	8.5	10.5	10.8	11.5
2	Vegetable Products, Inedible, except fibers and wood	15.5	22.6	24.3	28.3	25.0	28.3	41.4	46.7	60.5	81.8	89.5	134.2
2630	Leaf Tobacco, Stemmed, Domestic	11.9	15.5	12.6	12.2	3.9	4.2	11.6	13.1	15.2	16.8	24.2	32.1
2650	Tobacco Stems, Scrap, etc.	2.1	2.5	2.8	3.6	5.1	4.5	7.4	10.7	11.4	13.7	14.0	14.8
2670	Cigars and Cheroots	.6	3.2	5.9	7.2	9.5	11.3	12.0	13.9	25.9	39.6	38.6	66.7
3	Textile Fibers and Manufactures	77.9	88.4	95.4	110.8	120.0	117.3	140.9	153.1	166.0	185.4	199.2	225.3
3 170	Underwear, Cotton, Men's & Boys'	1.0	0.1	0.8	1.7	3.6	3.6	4.2	4.8	6.9	9.2	10.1	14.2
3 230	Outerwear, Cotton, Men's & Boys'	3.8	6.7	6.0	6.7	7.9	7.4	9.6	13.0	10.8	11.8	13.3	13.2
3 690	Wool Manufactures, NEC	1.9	5.1	8.0	7.4	9.1	3.4	2.9	3.6	5.7	11.2	8.1	2.8
3 855	Women's Underwear Rayon or Acetate	0.2	0.1	0.3	1.1	1.7	1.5	1.4	3.8	7.0	9.1	8.1	8.6
3 900	Women's Underwear, Man-made, except Rayon or Acetate	.7	.7	2.3	2.9	3.1	3.9	7.4	10.0	10.0	12.9	18.8	23.2
3 925	Sweaters, M-M FAB, Ex Rayon or Acet.	--	--	--	--	--	11.2	14.5	13.5	13.3	16.3	16.2	14.6
3 960	Corsets, Brassieres, etc. Ex Rubber	8.5	13.0	16.9	22.2	27.2	28.0	35.4	42.2	47.5	49.5	53.3	65.0
4	Wood and Paper	4.9	4.4	6.8	5.2	5.6	2.8	5.3	5.6	5.2	6.6	6.2	4.0

APPENDIX TABLE NO. 2

p 2

		1953	1954	1955	1956	1957	1958	1959	1960	1961	1962	1963	1964
5	Nonmetallic Minerals	6.0	5.0	7.7	19.3	28.9	45.9	60.8	54.6	68.6	68.7	68.5	70.8
5 300	Cement, Clay & Glass Products	2.0	3.0	3.0	5.0	9.0	5.0	9.0	7.0	7.0	8.0	9.1	8.5
5 900	Nonmetallic Minerals, NEC	2.0	1.0	3.0	13.0	18.0	40.0	51.0	46.0	60.0	59.0	56.9	59.2
6	Metals & Manufactures, except Machinery and Vehicles	2.5	3.9	4.3	4.3	6.5	12.1	11.7	8.9	11.4	16.3	15.6	18.0
7	Machinery and Vehicles	5.1	12.0	18.3	29.2	36.9	42.3	55.8	61.7	77.3	71.9	72.1	73.5
7 300	Electric Household Appliances	--	--	--	--	--	24.9	40.7	31.9	37.1	41.3	31.7	28.6
7 600	Electric Mach. & Apparatus, NEC	--	--	--	--	--	10.3	3.7	6.0	6.8	10.0	6.5	4.1
8	Chemicals and Related Products	6.5	6.4	5.3	5.8	7.0	6.7	9.6	18.1	30.9	35.2	40.7	48.8
8 150	Medicinal & Pharmaceutical Preparations	5.8	6.1	4.9	5.3	6.4	5.5	3.9	5.7	10.4	12.3	20.1	22.7
9	Miscellaneous	23.0	25.1	30.4	35.6	43.2	38.5	40.1	44.5	55.2	59.6	55.1	55.9
9 300	Toys, Athletic, and Sporting Goods, NEC	1.2	1.5	2.6	3.8	5.3	5.3	5.1	6.8	8.3	13.4	9.9	9.3
9 400	Jewelry and Related Items	0.6	1.0	1.4	2.7	2.8	1.7	4.8	9.6	12.6	9.6	3.2	5.1
9 730	Manufactured Plastic Products, NEC	2.7	3.3	4.9	8.7	11.9	9.6	11.5	7.8	9.9	13.7	14.9	6.0

Source: Basic Data from Bureau of the Census, FT-800 Reports

APPENDIX TABLE 3

Shipments to Puerto Rico from United States
Number of Automobiles

	<u>1953</u>	<u>1954</u>	<u>1955</u>	<u>1956</u>	<u>1957</u>	<u>1958</u>	<u>1959</u>	<u>1960</u>	<u>1961</u>	<u>1962</u>	<u>1963</u>	<u>1964</u>
Passenger cars, new (7930)	9,735	9,389	9,410	6,590	6,690	6,429	8,200	13,445	12,129	15,499	16,322	20,941
Passenger cars, used (7935)	321	362	592	890	1,763	2,480	4,818	8,020	9,440	10,790	12,498	13,419

Shipments from Puerto Rico to United States
thousands of short tons

	1,025	877	972	933	727	652	793	708	783	748	671	134
Cane sugar, raw (1800)												
Cane sugar, refined (1810)	118	119	129	112	122	135	134	144	138	139	150	132

Source: Basic data from the Bureau of the Census, FT-800 reports

APPENDIX TABLE 4

Trade Between United States and Puerto Rico
by type of vessel and U. S. Coastal
area of lading or discharging
To Puerto Rico
(In thousands of short tons)

Coastal Area of Lading	1953		1958		1959		1960		1961		1962		1963	
	Dry Cargo	Tanker	Dry Cargo	Tanker	Dry Cargo	Tanker	Dry Cargo	Tanker	Dry Cargo	Tanker	Dry Cargo	Tanker	Dry Cargo	Tanker
Total	1,300	550	1,426	101	1,465	76	1,616	76	1,739	48	1,757	39	1,667	56
North Atlantic	515	-	620	10	599	9	710	14	807	22	734	5	679	7
South Atlantic	107	-	7	-	25	-	14	62	18	26	21	34	56	-
Gulf	468	550	607	91	614	67	661	-	764	-	803	-	731	49
California	170	-	181	-	204	-	205	-	144	-	188	-	191	-
Pacific Northwest	39	-	11	-	23	-	25	-	6	-	11	-	10	-

From Puerto Rico

Coastal Area of Discharge	1953		1958		1959		1960		1961		1962		1963	
	Dry Cargo	Tanker	Dry Cargo	Tanker	Dry Cargo	Tanker	Dry Cargo	Tanker	Dry Cargo	Tanker	Dry Cargo	Tanker	Dry Cargo	Tanker
Total	1,421	205	1,174	1,616	1,387	2,157	1,468	2,024	1,388	2,453	1,302	2,265	1,057	2,387
North Atlantic	1,096	81	730	1,337	846	1,779	732	1,613	643	1,875	675	1,815	487	1,791
South Atlantic	168	-	305	200	294	326	258	297	296	325	244	281	283	387
Gulf	153	125	131	79	240	52	472	114	445	255	376	169	281	209
California	3	-	7	-	6	-	5	-	3	-	6	-	6	-
Pacific Northwest	1	-	1	-	1	-	1	-	1	-	1	-	-	-

Source: Maritime Administration

APPENDIX TABLE 5

VOLUME OF OCEANBORNE DRY CARGO TRADE BETWEEN UNITED STATES
AND PUERTO RICO 1/ (Thousands of Short Tons)

	To Puerto Rico						From Puerto Rico						Total Dry Cargo	Liner
	Total		Liner		Industrial and Irregular		Total		Liner		Industrial and Irregular		Inbound/Outbound	Inbound/Outbound
1963	1,667	100.0%	1,312	78.7%	355	21.3%	1,057	100.0%	276	26.1%	781	73.9%	-	21%
1962	1,757	100.0	1,374	78.2	383	21.8	1,302	100.0	285	22.0	1,016	78.0	74	21
1961	1,739	100.0	1,389	79.9	349	20.1	1,388	100.0	364	26.2	1,025	73.8	80	26
1960	1,616	100.0	1,408	87.1	208	12.9	1,468	100.0	320	21.8	1,148	78.2	91	23
1959	1,464	100.0	1,356	92.6	108	7.4	1,387	100.0	313	22.6	1,074	77.4	95	23
1958	1,426	100.0	1,209	84.8	217	15.2	1,174	100.0	300	25.6	874	74.4	82	25
1953	1,300	100.0	1,217	93.6	83	6.4	1,421	100.0	1,384	97.4	37	2.6	109	114

To Puerto Rico										Total Itemized Items	
	Total Industrial and Irregular	Rice	Corn	Wheat	Grain Sorgh.	Other Flour and Grain Plus Animal Feeds	Sulphur, Dry	Fertilizer and Fertilizer Materials	Tons	Percent of Total Industrial and Irregular	
1963	355	95	69	117	20	23	-	30	354	99.7	
1962	383	73	85	87	8	34	28	46	361	94.3	
1961	349	75	57	76	21	25	28	36	318	91.1	
1960	208	42	51	58	-	11	18	25	205	98.6	
1959	108	-	9	7	40	2	13	30	101	93.5	
1958	217 2/	1	2	-	-	19	15	61	98	45.2	
1953	83	2	-	-	-	-	-	79	81	97.6	

From Puerto Rico						Total Itemized Items	
	Total Industrial and Irregular	Sugar	Cement	Aluminum	Tons	Percent of Total Industrial and Irregular	
1963	781	512	268	-	780	99.9	
1962	1,016	741	238	37	1,016	100.0	
1961	1,025	636	271	117	1,024	100.0	
1960	1,148	698	252	197	1,147	100.0	
1959	1,074	787	287	-	1,074	100.0	
1958	874	454	297	-	751	85.9	
1953	37	-	5	-	5	13.5	

1/ Puerto Rico Region Includes Virgin Islands

1/ Puerto Rico Region Includes Virgin Islands

2/ 31.3% of this total is attributable to: Posts, Lumber and Paper (26 thousand tons) -- Commodities N.E.C. (42 thousand tons)

Source: Maritime Administration, Domestic Oceanborne and Great Lakes Commerce of the United States, and Unpublished Data.

PUERTO RICAN DOMESTIC OFFSHORE TRADE
COMPARISON OF REVENUE, REVENUE TONS AND AVERAGE RATES
FIRST YEAR/LAST YEAR OF STUDY: 1963 WITH 1954

EX. 36

	<u>Southbound Cargo</u>	<u>Northbound Cargo</u>	<u>Intermediate and Unallocated Cargo</u>	<u>All Cargo</u>
<u>REVENUE</u>				
1963	\$63,189,010	\$12,337,059	- -	\$75,526,069
1954	<u>31,769,868</u>	<u>12,159,573</u>	\$ 397,973	<u>44,327,414</u>
Increase (Decrease):				
Amount	\$31,419,142	\$ 177,486	\$ (397,973)	\$31,198,655
Per Cent	<u>98.9%</u>	<u>1.5%</u>		<u>70.4%</u>
<u>REVENUE TONS*</u>				
1963	1,819,748	432,889	- -	2,252,637
1954	<u>1,778,252</u>	<u>997,025</u>	53,852	<u>2,829,129</u>
Increase (Decrease):				
Amount	41,496	564,136	(53,852)	576,492
Per Cent	<u>2.3%</u>	<u>56.6%</u>		<u>20.4%</u>
<u>AVERAGE RATE PER TON</u>				
1963	\$ 34.72	\$ 28.50	- -	\$ 33.53
1954	<u>17.87</u>	<u>12.20</u>	\$ 7.39	<u>15.67</u>
Increase (Decrease):				
Amount	\$ 16.85	\$ 16.30	- -	\$ 17.86
Per Cent	<u>94.3%</u>	<u>133.6%</u>		<u>114.0%</u>

JA 229

*Tons shown consist primarily of revenue tons, but some weight tonnage is included.

Prepared by the Bureau of Financial Analysis, Federal Maritime Commission
February 21, 1966

EXHIBIT 36

PORTO RICAN DOMESTIC OFFSHORE TRADE
SUMMARY ANALYSIS OF REVENUE AND REVENUE TONS, ALL CARRIERS COMBINED
BY YEAR - BY PORT RANGE - SOUTHBOUND AND NORTHBOUND
1954 - 1963

TABLE 2

EXHIBIT 37

	NORTH ATLANTIC		SOUTH ATLANTIC		GULF PORTS		WEST COAST		ALL CARGO		PERCENT OF TOTAL	
	Revenue	Rev. Tons	Revenue	Rev. Tons	Revenue	Rev. Tons	Revenue	Rev. Tons	Revenue	Rev. Tons	Revenue	R. Tons
YEAR 1954												
Southbound	\$ 18,663,973	1,215,992	\$ 4,089	156	\$ 7,582,756	333,051	\$ 5,519,050	229,053	\$ 31,769,868	1,778,252	71.7%	62.9%
Northbound	10,472,309	883,805	939	96	1,365,428	102,708	320,877	10,416	12,159,573	997,025	27.4	35.2
Int. & Unal.			397,973	53,852					397,973	53,852	.9	1.9
TOTAL	29,136,282	2,099,797	403,021	54,104	8,948,184	435,759	5,839,927	239,469	44,327,414	2,829,129	100.0	100.0
YEAR 1955												
Southbound	22,501,893	1,488,482	407,887	21,751	8,523,375	417,332	5,462,911	217,073	36,896,066	2,144,638	72.9	61.4
Northbound	10,708,423	1,075,845	95,677	13,332	1,298,650	87,497	246,229	8,620	12,348,979	1,185,294	24.4	33.9
Int. & Unal.			1,339,324	164,404					1,339,324	164,404	2.7	4.7
TOTAL	33,210,316	2,564,327	1,842,888	199,487	9,822,025	504,829	5,709,140	225,693	50,584,369	3,494,336	100.0	100.0
YEAR 1956												
Southbound	22,551,266	1,504,309	1,180,986	20,586	8,904,726	418,720	6,571,228	243,031	39,208,206	2,186,646	78.6	70.4
Northbound	7,377,110	672,879	277,022	12,618	1,134,848	78,343	142,847	4,510	8,931,827	768,350	17.9	24.8
Int. & Unal.			1,748,138	149,229					1,748,138	149,229	3.5	4.8
TOTAL	29,928,376	2,177,188	3,206,146	182,433	10,039,574	497,063	6,714,075	247,541	49,888,171	3,104,225	100.0	100.0
YEAR 1957												
Southbound	25,116,130	1,447,742	78,020	1,044	11,729,864	456,119	6,601,940	226,105	43,525,954	2,131,010	79.9	72.0
Northbound	7,100,064	699,201	17,863	668	1,065,881	42,028	26,994	470	8,210,802	742,367	15.1	25.1
Int. & Unal.			2,744,299	85,937					2,744,299	85,937	5.0	2.9
TOTAL	32,216,194	2,146,943	2,840,182	87,649	12,795,745	498,147	6,628,934	226,575	54,481,055	2,959,314	100.0	100.0
YEAR 1958												
Southbound	27,781,582	1,200,509	1,223,126	16,873	11,376,264	405,512	5,876,407	195,562	46,257,379	1,818,456	84.8	74.5
Northbound	6,790,425	529,502	280,040	10,797	1,113,851	71,512	-	-	8,184,316	611,811	15.0	25.1
Int. & Unal.	123,448	9,946							123,448	9,946	.2	.4
TOTAL	34,695,455	1,739,957	1,503,166	27,670	12,490,115	477,024	5,876,407	195,562	54,565,143	2,440,213	100.0	100.0
YEAR 1959												
Southbound	31,543,033	1,335,707	1,627,661	21,703	10,059,491	340,742	6,994,350	221,965	50,224,535	1,940,117	83.8	71.1
Northbound	8,432,329	738,165	372,660	13,888	771,268	26,821	4,615	116	9,580,872	778,990	16.0	28.6
Int. & Unal.	127,472	8,760							127,472	8,760	.2	.3
TOTAL	40,102,834	2,082,632	2,000,321	35,591	10,830,759	367,563	6,998,965	222,081	59,932,879	2,727,867	100.0	100.0
YEAR 1960												
Southbound	34,964,730	1,388,943	2,203,603	32,103	10,334,591	365,944	2,349,685	59,698	49,872,609	1,846,688	84.7	77.9
Northbound	7,352,618	462,533	560,303	21,603	994,299	31,552	31,833	389	8,938,853	516,077	15.2	21.8
Int. & Unal.	101,826	6,334							101,826	6,334	.1	.3
TOTAL	42,418,174	1,857,810	2,763,906	53,706	11,348,890	397,496	2,381,518	60,087	58,913,288	2,369,099	100.0	100.0
YEAR 1961												
Southbound	34,168,226	1,333,605	2,382,371	32,523	14,208,903	521,832	833,513	18,395	51,593,013	1,906,355	82.3	76.7
Northbound	7,815,609	488,888	545,454	18,655	1,171,563	32,645	1,566,440	38,755	11,099,066	578,943	17.7	23.3
TOTAL	41,983,835	1,822,493	2,927,825	51,178	15,380,466	554,477	2,399,953	57,150	62,692,079	2,485,298	100.0	100.0
YEAR 1962												
Southbound	36,681,858	1,301,603	4,322,932	72,638	15,222,595	541,175	515,490	14,760	56,742,875	1,950,176	81.0	80.2
Northbound	7,042,663	306,281	935,100	38,940	1,412,646	40,057	3,876,939	96,059	12,267,348	482,037	19.0	19.8
TOTAL	43,724,521	1,607,884	5,258,032	111,578	16,635,241	601,232	4,392,429	110,819	70,010,223	2,432,213	100.0	100.0
YEAR 1963												
Southbound	42,531,440	1,240,276	6,086,132	89,829	11,633,298	408,296	2,938,146	81,347	63,189,010	1,819,748	83.7	80.8
Northbound	7,589,160	287,889	849,468	32,578	1,374,044	48,383	2,524,267	64,039	12,337,059	432,889	16.3	19.2
TOTAL	50,120,600	1,528,165	6,935,600	122,407	13,007,342	456,679	5,462,413	145,386	75,526,069	2,252,637	100.0	100.0
10-YEAR TOTALS												
Southbound	296,504,131	13,457,168	19,516,807	309,206	109,595,857	4,248,723	43,662,720	1,506,989	469,279,515	19,522,086	80.8	72.1
Northbound	80,680,510	6,145,688	3,934,546	163,175	11,702,498	561,546	8,741,141	223,374	105,058,695	7,093,783	18.1	26.1
Int. & Unal.	352,746	25,040	6,239,734	453,422	-	-	-	-	6,582,480	478,462	1.1	1.8
GRAND TOTAL	\$377,537,387	19,627,896	\$29,681,087	925,803	\$121,298,355	4,810,269	\$52,403,861	1,730,363	\$580,920,690	27,094,331	100.0%	100.0%

*Tons shown are primarily revenue tons, but some weight tonnage is included.

** Int. & Unal. refers to cargo loaded or discharged at intermediate ports and that about which satisfactory basis for allocation between southbound and northbound was not provided by available data.

Prepared by the Bureau of Financial Analysis, Federal Maritime Commission.
February 21, 1966

JA 230

BRIEF FOR PETITIONER

In the
UNITED STATES COURT OF APPEALS
For the District of Columbia Circuit

U.S. Court of Appeals
for the District of Columbia Circuit

NOV 29 1968

No. 21,217

Nathan J. Paulson
CLERK

SEA-LAND SERVICE, INC.,

Petitioner

v.

FEDERAL MARITIME COMMISSION
and
UNITED STATES OF AMERICA,

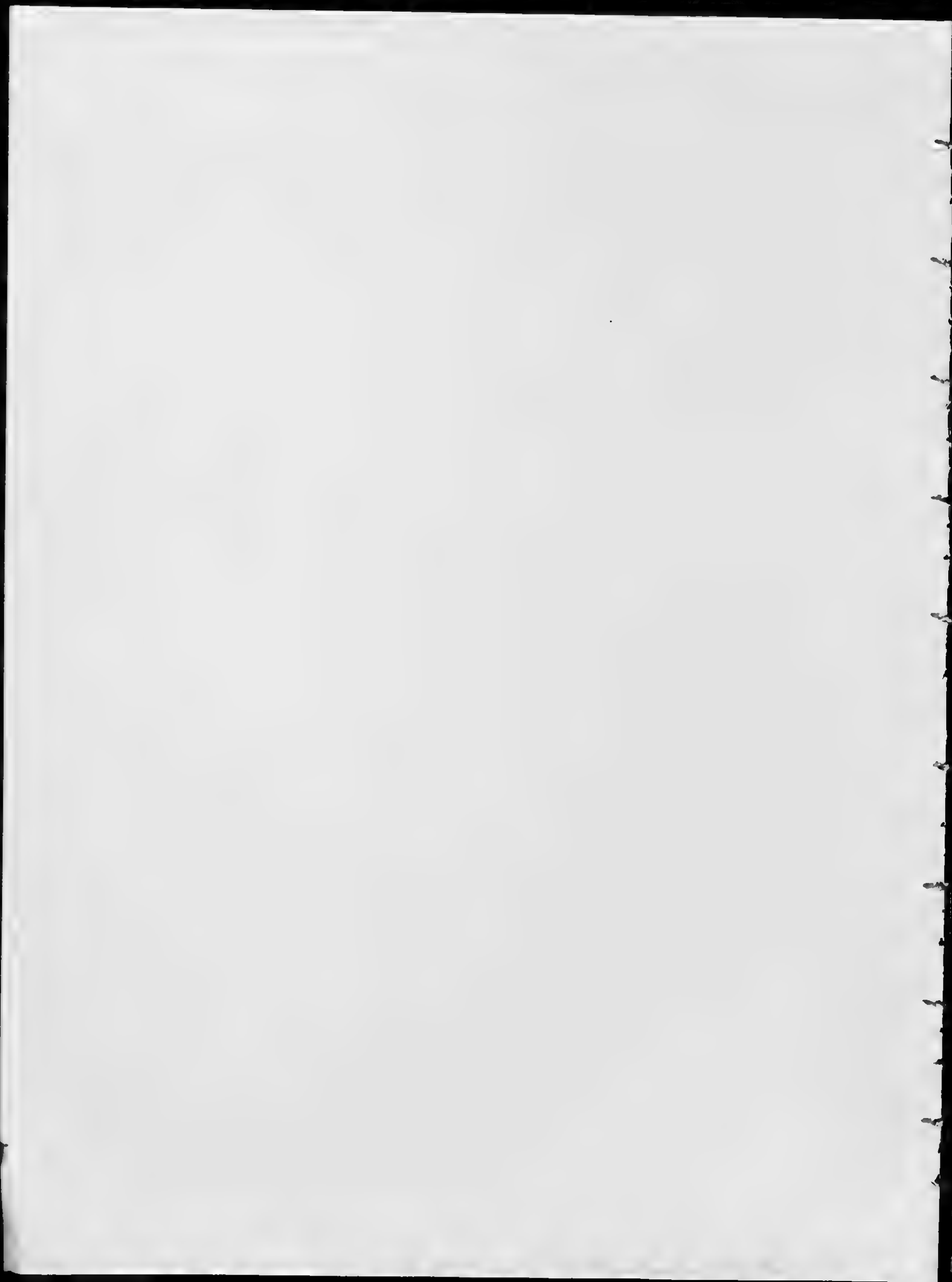
Respondents

*PETITION FOR REVIEW OF DECISION OF
THE FEDERAL MARITIME COMMISSION*

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(i)

STATEMENT OF QUESTIONS PRESENTED

By Prehearing stipulation between the parties, approved by the Court in order of October 10, 1967 (JA 75), the questions presented herein are as follows:

1. Does petitioner bring before the Court any final order or final action of the Federal Maritime Commission which is subject to judicial review?
2. Are the Commission's findings that at parity rates with Sea-Land between Jacksonville and Puerto Rico, TMT would not be able to compete and that Sea-Land has no competitive necessity for lowering its rates to the TMT level, based on adequate subordinate findings and supported by substantial evidence?
3. Did the Commission err in forbidding Sea-Land to lower its rates between Jacksonville and Puerto Rico to the level maintained by TMT if the record shows that such lower rates would be fully compensatory; and in the absence of a finding that they would not be fully compensatory or that they would be unduly preferential or prejudicial or otherwise in violation of the law?
4. Did the Commission err in finding not justified Sea-Land's proposed rate policy of reducing its rates between Jacksonville and Puerto Rico to the same level maintained by TMT, without simultaneously effecting comparable reductions between North Atlantic ports and Puerto Rico, even though TMT rates between Jacksonville and Puerto Rico are lower than rates applied between North Atlantic ports and Puerto Rico?
5. Did the Commission err in finding that Sea-Land has no competitive necessity to reduce its rates between Jacksonville and Puerto Rico for the reason that its operation is profitable and the continuation of its service is not threatened?
6. Did the Commission err in finding no violation of Section

(ii)

16, First, of the Shipping Act, 1916, when the record shows that the existing TMT rates attract cargo from origins which, based on inland rail rates, are tributary to North Atlantic ports?

7. Did the Commission err as a matter of law and act in contravention of Section 8 of the Merchant Marine Act, 1920 (46 U.S.C. 867) in its interpretation of the term "naturally tributary" to the ports, and in protecting TMT from the loss of traffic from areas naturally tributary to ports that it does not serve?
8. Is the Commission's conclusion that the Puerto Rico trade is "best regulated and coordinated" by preservation of TMT's service (Report, p. 11) supported by subordinate findings, based on substantial evidence and in accordance with the law?
9. Did the Commission err in refusing to allow Sea-Land to reduce its Jacksonville - Puerto Rico rates to the TMT level, in refusing to take into account, or reopen the proceeding for the taking of evidence with respect to, the entrance of another trailership carrier in the Jacksonville - Puerto Rico trade, whose rates are generally the same as those of TMT?
10. Did the Commission err in holding that Sea-Land has the burden of proof of justifying the proposed rates even though they were not placed under suspension?
11. Did the Commission err in failing to reverse the Examiner's exclusion from the record of letters from shippers (Exhibit 18 for identification) (JA 176-99)?

SUBJECT INDEX

STATEMENT OF QUESTIONS PRESENTED	i
JURISDICTIONAL STATEMENT	1
STATEMENT OF THE CASE	2
STATEMENT OF POINTS	4
SUMMARY OF ARGUMENT	6
ARGUMENT:	7
1. The petition brings before the Court a final agency action that is subject to judicial review	9
2. The Commission's finding that at parity rates with Sea-Land TMT would not be able to compete is not supported by substantial evi- dence and is in fact contrary to the evidence, and is not supported by adequate findings	10
3. The Commission erred as a matter of law in forbidding Sea-Land to meet the competition of TMT	14
4. The Commission erred in forbidding Sea-Land to maintain rates between Jacksonville and Puerto Rico lower than those maintained between the North Atlantic ports and Puerto Rico, and in misap- plying the burden of proof	18
5. The Commission's action in penalizing the more efficient service of Sea-Land between Jacksonville and Puerto Rico is contrary to the stated purposes of the Shipping Act, 1916 (46 U.S.C. 801, et seq.), and the Merchant Marine Act, 1936 (46 U.S.C. 1101, et seq.) ...	21
CONCLUSION	23
APPENDIX:	
Statutes Involved	A-1

TABLE OF CASES

*American Broadcasting Co. v. FCC, 85 App. D.C. 343, 179 F.2d 437	13, 14
Coal From Illinois and Indiana to Central Wisconsin, 304 I.C.C. 273	17

(iv)

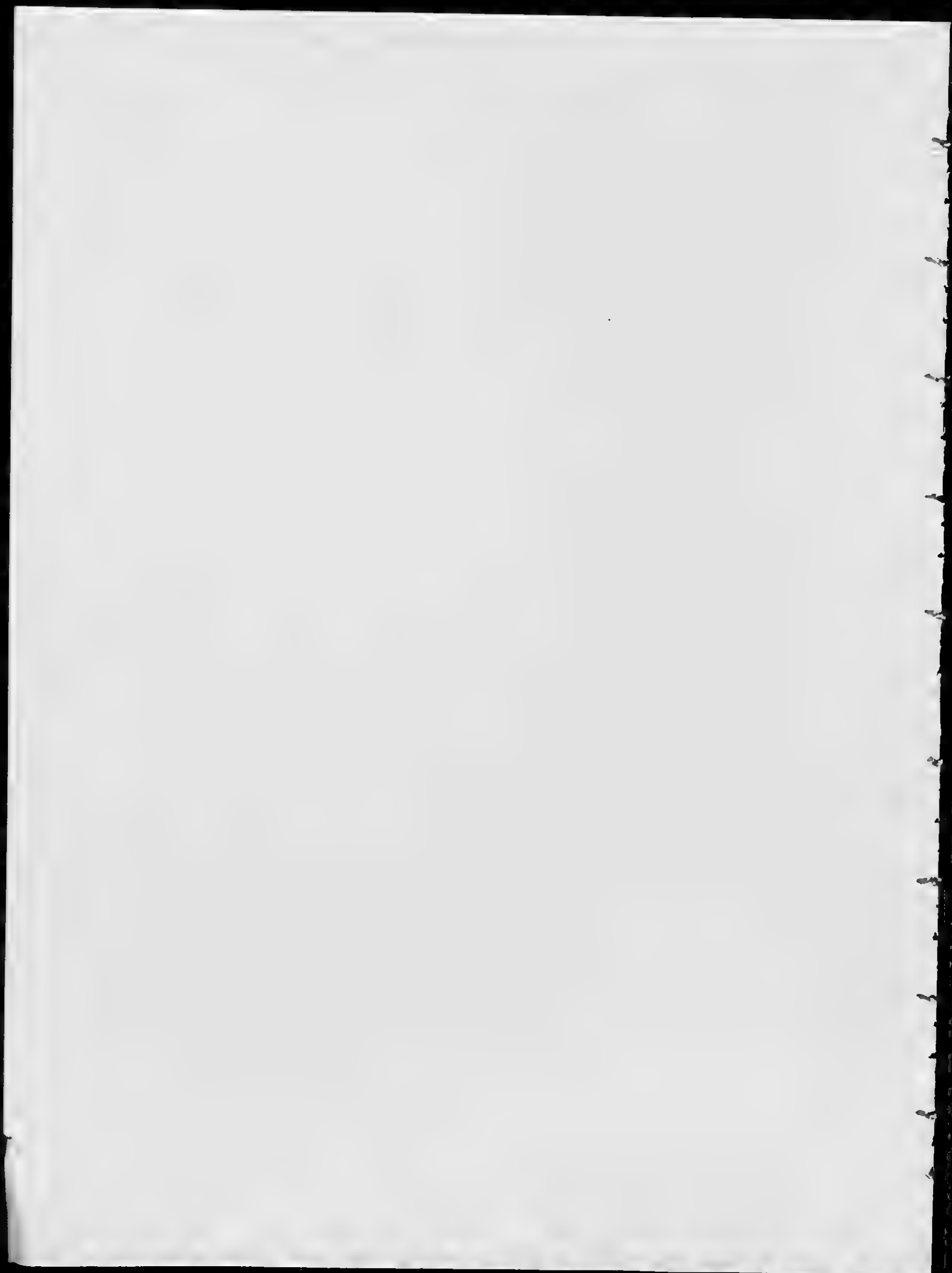
Frozen Food Express Co. v. United States, 351 U.S. 40	9
Georgia v. Penna. R.R. Co., 324 U.S. 439	17
Hinton v. Udall, 124 App. D.C. 283, 364 F.2d 676	9
ICC v. N. Y., N. H., & H. R.R. Co., 372 U.S. 744	22
Intercoastal Rates From Mt. Vernon and Standwood, Washington, 1 U.S.S.B.B. 360	17
*Isbrandtsen Co. v. United States, 93 App. D.C. 293, 211 F.2d 51	6, 9
*L. T. Barringer & Co. v. United States, 319 U.S. 1	18
Mississippi River Fuel Corp. v. FPC, 82 App. D.C. 208, 163 F.2d 433	13
Pennsylvania R. Co. v. United States, 363 U.S. 202	9
Philadelphia Co. v. SEC, 82 App. D.C. 335, 164 F.2d 889	9
*Texas and Pacific Ry. Co. v. United States, 289 U.S. 627	16
Toilet Goods Assn. v. Gardner, 360 F.2d 677	9
*United States v. Chicago, M. & St. P. and P. R. Co., 294 U.S. 499	6, 16, 18

STATUTES

Intercoastal Shipping Act, 1933, 47 Stat. 1425, as amended, 46 U.S.C. 843	1, 19, A-2
Judicial Review, 5 U.S.C. 704, 60 Stat. 237	2, A-1
Merchant Marine Act, 1936, 49 Stat. 1985, as amended, 46 U.S.C. 1101 et seq.	1, 21, 23
National Transportation Policy, 54 Stat. 899, 49 U.S.C. preceding § I	22
Orders of Federal Agencies; Review, 28 U.S.C. 2342, 2343	2, A-1
Shipping Act, 1916, 39 Stat. 728, as amended, 46 U.S.C. 801 et seq.	1, 21, 23

*Cases chiefly relied on are marked with asterisks.





In the
UNITED STATES COURT OF APPEALS
For the District of Columbia Circuit

No. 21,217

SEA-LAND SERVICE, INC.,

Petitioner

v.

FEDERAL MARITIME COMMISSION
and
UNITED STATES OF AMERICA,

Respondents

*PETITION FOR REVIEW OF DECISION OF
THE FEDERAL MARITIME COMMISSION*

BRIEF FOR PETITIONER

JURISDICTIONAL STATEMENT

The proceeding was instituted by the Federal Maritime Commission pursuant to the Shipping Act, 1916 (39 Stat. 728 c. 541, as amended, 46 U.S.C. § 801 et seq.) and the Intercoastal Shipping Act, 1933 (47 Stat. 1425, c. 199, as amended, 46 U.S.C. § 843) by orders

of April 30, 1964, May 21, 1964, June 4, 1964, September 30, 1964 and October 16, 1964 (JA 1-9), as an investigation into certain rates maintained by petitioner and TMT Trailer Ferry, Inc. (C. Gordon Anderson, Trustee), and also into the questions of whether TMT is entitled to maintain a differential below the rates of Sea-Land, and whether petitioner Sea-Land may assess a different rate on a commodity from Jacksonville to Puerto Rico that it maintains on the same commodity from other Atlantic ports to Puerto Rico.

The Commission issued its final report, which followed a Hearing Examiner's initial decision (JA 14), on May 9, 1967 (JA 45), and its order denying petition to reopen and reconsider was served on July 19, 1967 (JA 70). Sea-Land's petition for review was filed on August 9, 1967.

The jurisdiction of the Court with respect to Sea-Land's petition is invoked under the provisions of 28 U.S.C. § 2342 and the Administrative Procedure Act, 5 U.S.C. § 701 et seq. Venue is in this Court under 28 U.S.C. § 2343.

STATEMENT OF THE CASE

Petitioner, Sea-Land Service, Inc. ("Sea-Land"), is a common carrier by water carrying general commodities in containers between, among other ports, the Atlantic ports of New York, N.Y.; Baltimore, Maryland; Charleston, South Carolina; and Jacksonville, Florida; on the one hand, and ports in Puerto Rico, on the other (JA 47). It competes with various other carriers operating to and from Puerto Rico. At Jacksonville, it competes with TMT Trailer Ferry, Inc. (hereinafter "TMT"), and South Atlantic Caribbean Lines ("SACAL"), the latter carrier having recently entered this trade. TMT carries cargo in containers in a tug and barge service. (JA 47) SACAL carries cargo in containers in self-propelled trailerships, as does Petitioner. (JA 66)

TMT and SACAL maintain generally lower rates between Jacksonville and Puerto Rico than are maintained between Atlantic Coast ports to the north and Puerto Rico by the carriers serving those ports. (JA 59, 137-164) The TMT and SACAL rates between Jacksonville and Puerto Rico are generally lower than the Sea-Land rates in this trade (JA 50, 59), and to the extent that they are, Sea-Land is unable to attract the traffic. (JA 68-70, 85, 88, 89, 177-199)

This proceeding arose from efforts by Petitioner to publish freight rates between Jacksonville and Puerto Rico ports the same as maintained by TMT (and lately by SACAL) between those ports; and its efforts to meet this competition at Jacksonville without reducing its rates between the Atlantic ports to the north and Puerto Rico.

The report of the Federal Maritime Commission below, in Docket No. 1182 (JA 45), was served May 9, 1967 and the order denying petition for further hearing and reconsideration (JA 70) was served July 19, 1967. Intervenor TMT's motion to dismiss was denied by this Court without prejudice in order dated November 3, 1967. (JA 79) Petitioner's time for filing its brief was extended to November 18, 1967.

The report below states that the "general purpose" of the proceeding is to examine the competitive relationship between Sea-Land Service, Inc., Puerto Rico Division, and TMT Trailer Ferry, Inc. (C. Gordon Anderson, Trustee); "that the specific issues are as follows:

1. Whether TMT may maintain rates differentially lower than Sea-Land's rates from Jacksonville because of TMT's method of service or level of cost.
2. Whether Sea-Land may charge different rates from Jacksonville to Puerto Rico than it charges from other Atlantic ports to Puerto Rico.

3. The lawfulness of Sea-Land's rate on scrap or used metal northbound from Puerto Rico." (JA 46)

In its report the Commission (Commissioner Hearn dissenting) found, as stated in the head note, that:

"Sea-Land, because its Jacksonville operation is profitable and its continued operation is not threatened, has shown no competitive necessity for eliminating TMT's differential. Since rate parity would probably drive TMT out of the trade, TMT may maintain its differential.

"Sea-Land has not justified its proposed differentially lower rates between Jacksonville and Puerto Rico as compared with its rates between other Atlantic ports and Puerto Rico by sufficient proof of advantages in cost of operation, value of service to shippers, or other transportation conditions warranting such reduction.

"As Sea-Land's lower rate on scrap metal from Puerto Rico to Jacksonville was not suspended, Sea-Land did not have the burden of proving its lawfulness and in the absence of evidence to support a finding that the rate is unlawful, it is lawful." (JA 45)

Commissioner Hearn, dissenting, would remand the case to the Examiner for the further taking of evidence, holding that the issues are of "substantial significance", and the record "incomplete". (JA 65)

STATEMENT OF POINTS

1. The petition brings before the Court a final order or final agency action of the Federal Maritime Commission that is subject to judicial review.
2. The Commission erred in forbidding Sea-Land to reduce its

rates between Jacksonville and Puerto Rico to the level of its competitors in that trade, absent a finding that the proposed parity rates would be non-compensatory (in fact the record shows that they would be compensatory, that they would result in undue preference or prejudice, or would otherwise violate the statutes.

3. The Commission's finding that Sea-Land has no competitive necessity to equalize the rates of TMT between Jacksonville and Puerto Rico, and that at parity rates TMT would not survive, is not supported by substantial evidence, is contrary to the evidence, and is not supported by adequate subordinate findings. Relevant evidence on the point was erroneously excluded.

4. The Commission erred in denying Sea-Land's petition to reopen for further hearing to adduce evidence of a new carrier service in the Jacksonville - Puerto Rico trade (SACAL) and in ignoring the impact of that service on the issues before it.

5. The Commission erred in forbidding Sea-Land to meet carrier competition at Jacksonville by maintaining lower rates between Jacksonville and Puerto Rico ports than between North Atlantic ports and Puerto Rico ports.

6. The Commission erred in holding a rate "umbrella" over the less efficient service of TMT, vis-a-vis that of Sea-Land, contrary to the applicable statutes.

7. The Commission erred in failing to find that TMT, by maintaining lower rates between Jacksonville and Puerto Rico than apply between the North Atlantic ports and Puerto Rico, is guilty of undue and unreasonable preference and prejudice in violation of Sec. 16, First, Shipping Act, 1916, 46 U.S.C. 815.

8. The Commission has erred in placing the burden of proof.

SUMMARY OF ARGUMENT

The report below, and the order denying reopening, constitute final agency action, ripe for review by the Court, for the reason, among others, that they "impose an obligation, deny a right, or fix some legal relationship as a consummation of the administrative process". *Isbrandtsen Co. v. United States*, 93 App. D.C. 293, 211 F.2d 51 (1954).

It is basic law that carriers have the right in the exercise of their managerial discretion to establish any rates within the "zone of reasonableness" that do not produce undue preference or prejudice or are otherwise contrary to the law. *United States v. Chicago, M. & St. P. and P. R. Co.*, 294 U.S. 499. The Sea-Land rates proposed to equalize the rates of its competitors between Jacksonville and Puerto Rico, have erroneously been condemned by the Commission, inasmuch as it made no finding that they would be non-compensatory, produce undue preference or prejudice, or otherwise violate any section of the statute.

The finding that Sea-Land rates at the TMT level would "probably" force TMT out of business is unsupported by adequate subsidiary findings and is contrary to the evidence. In any event, that is insufficient ground for condemning the proposed Sea-Land rates, particularly when Sea-Land has been found by the Commission to be the more efficient carrier. Moreover, the Commission's denial to Sea-Land of the right to meet the TMT competition merely because Sea-Land's overall operation is profitable and the continuation of its service not threatened, reflects an erroneous conception of "competitive necessity".

The Commission's holding that Sea-Land may not maintain lower rates between Jacksonville and Puerto Rico than maintained between North Atlantic ports and Puerto Rico is in error in that it is not

based on a finding of undue preference and prejudice and in that it places on Sea-Land the burden of justifying the rate difference by relative cost showings; and overlooks the different transportation conditions in the two trades, i.e., the different competitive situations.

The Commission erred in allowing TMT to do that which it forbids Sea-Land to do; i.e., assess lower rates in the Jacksonville - Puerto Rican trade than are maintained in the North Atlantic - Puerto Rican trade.

In insulating TMT from the equal rate competition of Sea-Land, the Commission has not only erroneously interfered with Sea-Land's right to compete by lawful means but it has encouraged inefficiency in transportation and discouraged efficiency, contrary to the provisions of the relevant shipping statutes.

Although the decision to reopen proceedings is generally discretionary with administrative agencies, where, as here, Sea-Land requested reopening in part to show that in order to compete in the Jacksonville-Puerto Rican trade it not only must meet the rates of TMT but also those of a newly instituted trailership service, that of South Atlantic Caribbean Lines, Inc. whose rates are generally the same as those of TMT and whose services are as attractive to the shipping public as Sea-Land's, the Commission committed an abuse of discretion in not granting reopening.

ARGUMENT

Sea-Land's basic purpose in the proceedings below was to obtain a ruling from the Federal Maritime Commission that it would be permitted to publish the same freight rates applying between the port of Jacksonville, Florida and ports in Puerto Rico as are applied by its competitor, TMT.

Sea-Land also sought freedom to maintain lower rates between Jacksonville and Puerto Rico than between the North Atlantic ports that it serves and Puerto Rico to the extent necessary to meet the TMT competition; that is to say, Sea-Land did not want to depress its entire rate structure from all Atlantic ports merely because of the necessity for meeting the particular competition at Jacksonville. Finally, Sea-Land sought in the alternative a finding that TMT, by maintaining lower rates between Jacksonville and Puerto Rico than generally maintained between North Atlantic ports and Puerto Rico, was guilty of giving undue and unreasonable preference and advantage to the port of Jacksonville and the cargo moving through that port, and undue and unreasonable prejudice and disadvantage to the North Atlantic ports and the traffic moving through those ports.

Sea-Land has been rebuffed on all counts. The Commission has forbidden it to reduce its rates to the TMT (and SACAL) level despite the clear showing of record that it must have parity rates to compete, on the ground that this might put TMT out of business. Sea-Land has been denied the right to reduce rates between Jacksonville and Puerto Rico without simultaneous reductions from the North Atlantic ports — not based on a finding that this would result in undue preference or prejudice — but on the primary ground that Sea-Land had not sustained its “burden” of showing that a difference in rates was justified by differences in cost, Jacksonville - Puerto Rico vis-a-vis North Atlantic ports - Puerto Rico. TMT, on the other hand, was given *carte blanche* to continue to maintain lower rates from Jacksonville than are generally applied from the North Atlantic ports; no cost or other justification was required of this carrier.

We submit that the action of the Commission below thwarting Sea-Land's efforts to be competitive in the Jacksonville - Puerto Rican trade, and to maintain the rates the same as those of its competitors, is arbitrary, capricious, contrary to the evidence and contrary to the law.

1. The Petition Brings Before the Court a Final Agency Action that Is Subject to Judicial Review.

The motion to dismiss or for alternative relief, filed herein by TMT, averred that the proceeding below is not ripe for judicial review. Petitioner filed an extensive answer to this motion on October 18, 1967, to which answer the Court's attention is respectfully directed. It was there pointed out that although Petitioner was not by the terms of an "order" specifically directed to do anything or to refrain from doing anything, the Commission report nevertheless without question circumscribes Petitioner's future rate making practices in the Puerto Rican trade; holds that it may not reduce its rates to the TMT level; and that it may not maintain lower rates from Jacksonville than from ports to the north. The Commission's action since its report was issued in suspending the operation of a proposed Sea-Land rate on doors, sought to be reduced to the TMT level (in Docket 67-35) is a clear indication that the Commission itself considers its report below to be a definitive statement of what Sea-Land may and may not do in the area of rate making. (Sea-Land Answer, p. 3)

As support for our contention that the report and order below are in fact ripe for review by this court, we refer to the language of the report itself (JA 58, 59, 63), and the order denying reopening (JA 70-73). We also direct attention to *Isbrandtsen Co. v. United States*, 93 App. D.C. 293, 211 F.2d 51, 55 (1954); *Philadelphia Co. v. SEC*, 82 App. D.C. 335, 164 F.2d 889 (1947); *Pennsylvania R. Co. v. United States*, 363 U.S. 202, 205 (1960); *Frozen Food Express v. United States*, 351 U.S. 40 (1956); *Toilet Goods Assn. v. Gardner*, 360 F.2d 677 (1966) (aff'd, 387 U.S. 767); *Hinton v. Udall*, 124 App. D.C. 283, 364 F.2d 676, 680 (1966) (cert. den., 385 U.S. 878).

These decisions make it clear that the action of the Commission below is final agency action that is subject to judicial review.

2. The Commission's Finding That at Parity Rates with Sea-Land TMT Would Not Be Able To Compete Is Not Supported by Substantial Evidence and Is in Fact Contrary to the Evidence, and Is Not Supported by Adequate Subordinate Findings.

The Commission makes the flat finding, "We find that shippers would as a rule prefer the more modern, faster, and more dependable service of Sea-Land if rates are equal (with TMT)" (JA 55). A footnote reference indicates that the Commission's findings in this area are based "upon this record and our general knowledge of the subject derived over the years". (*Ibid.*) The portions of the record relied on are not identified.

As the party resisting Sea-Land's efforts to achieve rate parity, the burden was (or should have been) upon TMT to prove by substantial evidence that it in fact requires insulation from equal rate competition by Sea-Land; that at equal rates it would not share in the traffic. However, the only evidence that TMT adduced in this regard consisted of self-serving statements by its own employees.

Obviously, the best evidence as to the preferences and desires of shippers would have been the evidence of the shippers themselves. But, there is not a word of shipper testimony in this record indicating that the calibre of the TMT service would make that service unacceptable at rates the same as those maintained by Sea-Land. There is not a word of shipper testimony to the effect that the greater frequency of TMT's service vis-a-vis Sea-Land's (JA 55) is not a factor at least counterbalancing the slowness of the TMT service and its lack of regularity. Sea-Land attempted to enlighten the record by introducing in evidence a number of letters from shippers addressed to Sea-Land's General Traffic Manager, who was a witness in the proceeding. (JA 88-90; 176-199) The thrust of these letters is that the services of Sea-Land from Jacksonville to Puerto Rico are not

being used because its rates are higher than those of TMT. The letters state further that if Sea-Land should maintain the same rates as TMT, consideration would be given to shipping part of the traffic via Sea-Land. These letters were rejected by the Examiner in his initial decision, not on the ground that they were objected to, i.e. that they violate the hearsay rule, but on the ground that they were "cumulative". (JA 18) The Commission stated in its report (JA 55):

"Likewise, it is unnecessary to rule upon the propriety of the Examiner's exclusion from the record of letters from shippers because such letters would not change the above findings."

The "above findings" are to the effect that the TMT service being less efficient and attractive than Sea-Land's service, shippers would prefer the Sea-Land service at equal rates. (*Ibid.*)

Particularly in the absence of any shipper testimony of record dealing with the alleged superiority of Sea-Land's service vis-a-vis that of TMT, it is submitted that the excluded communications should have been admitted as shedding light upon the important questions of (a) whether there is a genuine competitive necessity on Sea-Land's part for parity rates with TMT and (b) whether in the event parity rates were established *all* of the involved traffic would shift to Sea-Land, to the detriment of TMT. The communications included in Exhibit 18 (JA 177-199) clearly point up the non-competitiveness of Sea-Land because its rates are higher than those of TMT. They likewise negate the apparent assumption of the Commission that at equal rates Sea-Land would command virtually all of the traffic, forcing TMT out of business. The action of the Commission in refusing to accept Exhibit 18 for identification should be reversed by this Court.

The conclusory findings of the Commission that at parity rates

with Sea-Land TMT would not be able to compete, and that its ability to compete probably would be seriously crippled (JA 50, 56) not only are not supported by substantial evidence, but in fact are contrary to the evidence.

Sea-Land's Witness Sharkey testified to traffic movements that Sea-Land had lost to TMT because of the latter's lower rates (JA 85). He introduced Exhibit 5 (corrected) (JA 137-164) which compares the total costs to shippers of moving various commodities via Sea-Land, vis-a-vis TMT, showing that TMT's rates are lower than Sea-Land's except with respect to low-rated undesirable items such as bottles, paper, etc. which TMT is not interested in handling. The Witness Sharkey's testimony with respect to this exhibit clearly establishes that Sea-Land is non-competitive with TMT because of the latter's lower rates. His testimony was summarized in Petitioner's Petition to Reopen for Further Hearing or for Reconsideration (JA 68-70). This testimony was not adverted to in the Commission's report below.

Petitioner's General Traffic Manager, with 27 years traffic experience with Sea-Land and its predecessor companies, emphasized and re-emphasized at three points in his testimony, that the freight rate is the controlling consideration in the selection of a carrier by a shipper; that the lowest rate moves the traffic (JA 90, 91, 96, 97). This testimony also was not referred to in the Commission's report.

Sea-Land argued to the Commission that any service disability on the part of TMT occasioned by its relatively slow service is nullified by the fact that its service is twice as frequent as Sea-Land's (JA 55). The Commission disagreed. (*Ibid.*) In so doing it ignored the testimony of TMT's own witness, on cross examination, that frequency is an important factor; i.e. "I think it has considerable influence".

Petitioner is aware of the disinclination of this Court to substitute its judgment for that of the administrative agencies in the areas coming under their jurisdictions. You will not normally dispute agency findings, when supported by substantial evidence, even though your appraisal of the record would have produced different findings. However, by the same token, you also hold that there must in fact be evidence to support the agency's conclusions. *Mississippi River Fuel Corp. v. FPC*, 82 App. D.C. 208, 163 F.2d 433, 439. Furthermore, you hold that the agency decisions must contain a statement of the basic underlying facts upon which the ultimate conclusions are based, and a statement of the evidence upon which such facts are predicated. *American Broadcasting Co. v. FCC*, 85 App. D.C. 343, 179 F.2d 437, 444 (1949).

There was no substantial evidence to support the Commission's conclusion below that TMT must have a rate differential under Sea-Land in order to survive. The only evidence on the point was the self-serving, conclusory statements by TMT employees unsupported by a single word of shipper testimony or by a single concrete example of inability to compete with Sea-Land at parity rates. There was not the slightest bit of evidence to support the finding that Sea-Land parity rates would probably force TMT out of the trade. On the contrary, as shown above, there is in fact substantial evidence that TMT would be able to compete with Sea-Land at parity rates.

Furthermore, and equally important, the report below contains no clear statement of the basic underlying facts upon which its final conclusions are based, nor does it adequately reveal the evidence upon which it relied in concluding that at parity rates TMT would not be able to compete with Sea-Land. Absent such underlying facts and designation of the evidence, the reviewing court can neither determine

"whether the decision reached by the Commission follows as a matter of law from the facts stated as its basis, [or] whether the facts so stated have any substantial support in the evidence". *American Broadcasting Co. v. FCC, supra*, p. 444.

In ignoring the relevant evidence concerning TMT's ability to compete with Sea-Land at parity rates, in failing to reveal the facts of record upon which its findings in the premises were based, and in arriving at conclusions unsupported by the evidence and adequate subordinate findings, the Commission has erred.

3. The Commission Erred as a Matter of Law in Forbidding Sea-Land To Meet the Competition of TMT.

The Commission report forbids Sea-Land to reduce its rates between Jacksonville and Puerto Rico to the level of its competitor, TMT, with or without an equivalent reduction in its, Sea-Land's, rates between the North Atlantic ports and Puerto Rico. This is based upon a finding that at parity rates Sea-Land would put TMT out of business because of TMT's inferior service. (JA 50, 56) As has been shown, this conclusory finding is supported neither by the record nor by adequate subsidiary findings. The Commission's action is also based on the finding that Sea-Land is getting its "share" of cargo and, its present operation being "profitable" (JA 64, 65), it has no necessity to meet the TMT rates.

The Commission's refusal to allow Sea-Land to meet TMT's rates was despite findings indicating that Sea-Land cannot compete for traffic at higher rates. The Commission found that

"Because of TMT's lower rates, Sea-Land has been unable to participate in the carriage of certain commodities". (JA 49)

"Generally TMT quotes rates on important commodities lower than Sea-Land's, and under this rate structure, TMT has retained a significant share of the traffic offered at Jacksonville. Indeed, TMT by this lower rate policy has attracted cargo from inland points that could also readily be served by North Atlantic ports." (JA 50, 51)

"Undoubtedly TMT's lower rates have prevented Sea-Land from capturing traffic from TMT * * *" (JA 64, 65)

Thus the Commission concedes that under its decision Sea-Land will be non-competitive with TMT to the extent that its rates are higher than TMT. And we have shown, except for some low rated (and thus relatively unprofitable) traffic, TMT's rates are lower than Sea-Land's rates.

A further result of the Commission's decision is that Sea-Land will remain non-competitive with another carrier in the Jacksonville-Puerto Rican trade, South Atlantic Caribbean Lines, which as we have shown recently entered the trade at rates on the same general level as TMT, and with a type service comparable to Sea-Land's. (JA 59, 66, 67) At no place in the Commission's report is any weight given to this added competition.

As stated, the Commission's action in promulgating what is in effect a minimum rate order against Sea-Land rests in large part upon the proposition that Sea-Land has no competitive necessity to reduce its rates between Jacksonville and Puerto Rico because Sea-Land gets "its share" (unspecified) of cargo; and its operation is "profitable" (JA 64). In thus restricting Sea-Land's competitive efforts, the Commission is, of course, assuming the role of a "handicapper"; it is essaying the allocation of traffic among the carriers. We know of no statutory basis for such regulatory activity.

The Report's apparent premise is that in order that a carrier justify a competitive reduction in rates, it must show (a) that it is losing money, and (b) that it is not obtaining its "share" of the total traffic (whatever that may be). The Report holds that the carrier must in addition show that its participation in the traffic for which it seeks to become competitive will not harm its competitors.

We submit that contrary to the Commission's rationale, a carrier has no such burden. It has the right, under the statutes, to publish on a given item of traffic whatever rate is necessary to share in the movement of the traffic, so long as that rate is compensatory to it, does not produce undue or unreasonable preference or prejudice, or otherwise violate any provision of the statutes. The fact that a carrier's operation may be profitable, and that it is transporting traffic other than the particular traffic for which it seeks to compete, is no bar to becoming competitive for that traffic. The Commission has no statutory authority to perform the function of selecting and determining the kinds and amounts of traffic which a carrier may transport. The decision is that of the carrier — so long as he does not violate some provision of the statute in his competitive efforts.

This has been the law since the beginning of regulation. It was the holding of the United States Supreme Court in *United States v. Chicago, M. & St. P. & P. R. Co.*, 294 U.S. 499 (1935), that

"A zone of reasonableness exists between maximum and minimum within which a carrier is ordinarily free to adjust its charges for itself" (p. 506).

In *Texas and Pacific Ry. Co. v. United States*, 289 U.S. 627, 636 (1932), the Court said:

"As the carriers are in competition for the business they may, within the zone of reasonableness prescribed by the statute, adjust their rates so as to retain the desired traffic for their own lines".

See also *Georgia v. Pennsylvania Railroad Co., et al.*, 324 U.S. 439, 460-61.

This deference to the managerial discretion of carriers has been displayed in countless Federal Maritime Commission (or its predecessors) and Interstate Commerce Commission decisions. For example, in *Intercoastal Rates From Mt. Vernon and Standwood, Washington*, 1 U.S.S.B.B. 360, the Board Stated

"The right to initiate rates inheres in the carriers. Such rates may be changed by them unless in doing so they violate the law" (p. 362).

As the Interstate Commerce Commission states in *Coal From Illinois and Indiana to Central Wisconsin*, 304 I.C.C. 273, 283:

"Granted the compensativeness of the proposed rates in the absence of undue preference or destructive competitive practices, we may not prevent their establishment in order to protect the rates of competitors".

Thus under the applicable decisions in order that Sea-Land's proposed rates between Jacksonville and Puerto Rico (at the TMT/SACAL level) be found unlawful, they must be found:

- a. Unreasonable per se; (i.e., non-compensatory), or
- b. Productive of undue or unreasonable preference or prejudice, in violation of Section 16, First, of the Shipping Act, 1916, 46 U.S.C. 815, or
- c. Otherwise in violation of some provision of the law.

There is no finding in the Commission's report that the proposed Sea-Land rates would be non-compensatory. In fact, cost evidence adduced by Sea-Land indicates that rates at the TMT level would be clearly compensatory,¹ and the Commission's report finds that Sea-

¹Exhibit 19, Table I (JA 200), considered with Exhibit 5 (corrected) (JA 137-164) shows that Sea-Land's average costs between Jacksonville and Puerto Rico are less than the TMT rates which it seeks permission to meet.

Land is operating at a profit (Rep. p. 14). There is no finding, moreover, that Sea-Land's rates on the TMT level would result in undue preference or prejudice. Nor is there a finding that these rates would violate *any* section of the Shipping Acts.

In the circumstances, the action of the Commission in condemning Sea-Land's proposed parity rates, and in effect issuing a minimum rate order against Sea-Land, is clearly erroneous as a matter of law, *cf. United States v. Chicago, M. & St. P. & P. R. Co., supra.*

4. The Commission Erred in Forbidding Sea-Land To Maintain Rates Between Jacksonville and Puerto Rico Lower Than Those Maintained Between the North Atlantic Ports and Puerto Rico and in Misapplying the Burden of Proof.

The Commission's holding that Sea-Land (in trying to meet TMT competition) may not publish lower rates between Jacksonville and Puerto Rico than between North Atlantic ports and Puerto Rico is not supported by a subsidiary finding that such differences would produce undue preference or prejudice, or otherwise violate any provision of the statute. It was based on the asserted fact that "Sea-Land has not demonstrated its cost capacity to reduce rates out of Jacksonville" (JA 63) i.e., that its operating costs between Jacksonville and Puerto Rico are lower by the amount of the proposed differential than its costs between the North Atlantic ports and Puerto Rico. It was also based on the incorrect premise that Sea-Land has shown no "other transportation condition" that justifies different rates between Jacksonville and the North Atlantic ports. (*Ibid.*)

Obviously, the competitive situation at Jacksonville is a "transportation condition". In *L. T. Barringer & Co. v. United States*, 319 U.S. 1 (1943), the Supreme Court said:

"We have frequently sustained the Commission's determination, in cases arising under Sec. 3 [comparable to differences in, of the Shipping Act, 1916] that differences in competitive conditions justify lower through rates over one route than over another" (p. 13).

The fact that Sea-Land meets different competitive rates at Jacksonville (via TMT and South Atlantic Caribbean Lines) than at the North Atlantic ports clearly justifies its proposed difference in rates as between the ports.

Here again the Commission has exceeded its authority by finding unlawful Sea-Land's proposal to meet the TMT rates at Jacksonville (without simultaneously reducing its rates from the North Atlantic ports) in the absence of a finding that this would constitute a violation of any section of the Shipping Acts. The Commission has in effect said to Sea-Land — you cannot meet the TMT rates at Jacksonville, and even if you could, you would have to reduce your rates from all of the Atlantic ports that you serve. Certainly this two-pronged invasion of Sea-Land's right to fix its rates to Puerto Rico to be legally sustainable must be accompanied by some finding that contrary courses of action would violate some portion of the statute.

Moreover, there is the matter of the burden of proof. The Commission has placed the burden on Sea-Land to justify by cost or other considerations, lower rates through Jacksonville than through ports to the north. (JA 63) The statutes does not place the burden on Sea-Land, however, inasmuch as its rates were not placed under suspension.

The first paragraph of Section 3 of the Intercoastal Shipping Act, 1933, provides for investigations and hearings with respect to new carrier rates, practices, etc. The second paragraph of Section 3 provides that

"pending such hearing and the decision thereof (i.e. the investigative hearing provided for in paragraph 1) the Board upon filing with such schedule and delivering the carrier or carriers affected thereby a statement in writing of its reasons for such suspension, may from time to time suspend the operation of such schedule * * *"

The next to last sentence of the same paragraph (added in 1939) reads:

"At any hearing *under this paragraph* the burden of proof to show that the rate, fare, charge, classification, regulation or practice is just and reasonable shall be upon the carrier or carriers." (emphasis added)

Rule 10(o) of the Commission's Rules of Practice and Procedure (46 C.F.R. 502.155) reads:

"At any hearing in a *suspension proceeding* under Section 3 of the Intercoastal Shipping Act, 1933 Rule 5 (g), the burden of proof to show that the suspended rate, fare, charge, classification, regulations, or practice is just and reasonable shall be upon the respondent carrier or carriers. In all other cases, the burden shall be on the proponent of the rule or order." (emphasis added)

Thus Sea-Land's rates between Jacksonville and Puerto Rico not having been suspended, it does not have the statutory burden of justifying them, although in fact it did justify them by probative evidence. The statutory burden was with those parties asserting that Sea-Land should not be allowed to meet the competition of TMT at Jacksonville, or to maintain lower rates through Jacksonville than through ports to the north.

Not only has the Commission misdirected the statutory burden of proof, but it has applied it unevenly. It has held that TMT is en-

titled to maintain lower rates than Sea-Land, and it has not required TMT (unlike Sea-Land) to charge the same rates from Jacksonville as apply from ports to the north. TMT has not been given the burden of justifying either its differential under Sea-Land or its differential under the North Atlantic ports. All of the burden has been put upon Sea-Land.

If in fact Sea-Land has the burden of proof in this proceeding to justify its own rates, clearly TMT has the same burden with respect to its rates.

5. The Commission's Action in Penalizing the More Efficient Service of Sea-Land Between Jacksonville and Puerto Rico Is Contrary to the Stated Purposes of the Shipping Act, 1916 (46 U.S.C. 801 et seq.), and the Merchant Marine Act, 1936 (46 U.S.C. 1101 et seq.).

The Commission concludes that the Puerto Rican trade "is best regulated and coordinated by preservation of TMT's service" (JA 60), despite its finding that Sea-Land provides a modern and efficient service and that TMT does not. (JA 54, 55)

Thus TMT is given permission to continue its cut rate policy in the future, and Sea-Land will continue to be non-competitive (except for some low-rated traffic), unless and until the Commission's action below is reversed. The end result can only be that Sea-Land will find the trade unprofitable and discontinue its participation therein. This means that the Commission's preoccupation with the preservation of the TMT service at all cost will in the end leave the Jacksonville-Puerto Rican trade to a large extent dependent upon what the Commission itself has found to be an inefficient service.

The preamble to the Shipping Act, 1916 (46 U.S.C. 801 et seq.) indicates that the purpose of the Act, in part, is,

"to establish the U. S. Shipping Board for the purpose of encouraging, developing and creating a Naval auxiliary and Reserve and a Merchant Marine to meet the requirements of the commerce of the United States with its territories and possessions and with foreign countries."

The Declaration of Policy of the Merchant Marine Act, 1936 (46 U.S.C. 1101) states in part, that

"It is necessary for the national defense and development of its foreign and domestic commerce that the U.S. shall have a Merchant Marine sufficient to carry its domestic water-going commerce and a sufficient portion of the water-borne export and import foreign commerce of the U.S. * * * capable of serving as a naval and military auxiliary in time of war or national emergency * * * composed of the best equipment, service, and most suitable types of vessels constructed in the United States, and manned with a trained and efficient citizen personnel * * * It is hereby declared to be the policy of the United States to foster the development and encourage the maintenance of such a Merchant Marine."

As the Supreme Court stated in *ICC v. N. Y., N. H. & H. R.R. Co.*, 372 U.S. 744:

"Nor can we conclude that the statutory references to such vital considerations as national defense [i.e., in the National Transportation Policy, 49 U.S.C. preceding § I] are mere window dressing, without any practical significance in terms of the Commission's function" (p. 762).

Manifestly, concern for the development and maintenance of a strong Merchant Marine, from the standpoint both of the Nation's defense and its commerce, must permeate all actions by the Federal Maritime Commission.

The Commission in the instant proceeding finds that "Sea-Land's service is modern and efficient. TMT's vessels are not particularly modern or, in view of the inability to adhere to a schedule, efficient". (JA 54, 55) Nor does TMT have any plans for an improved type (i.e. a self-propelled) operation. (JA 125) Yet the Commission has in this proceeding raised a protective "umbrella" over TMT's inefficient service, to protect it from the competition of Sea-Land's more efficient service. Clearly this overriding concern for the protection of an inefficient service, and this flagrant disregard for the economic welfare of an efficient service, are contrary to the intent of the Congress to promote and develop an efficient Merchant Marine, for the defense and commerce of the United States.

CONCLUSION

As has been demonstrated, the findings and conclusions of the report below are not based on substantial evidence, are in fact contrary to the evidence, and are not supported by adequate subordinate findings. Moreover, the Commission's report errs as a matter of law, in the respects stated

The report of the Commission, and its denial of Sea-Land's Petition to Reopen for Further Hearing or Reconsideration, should be reversed by this Court.

Respectfully submitted,

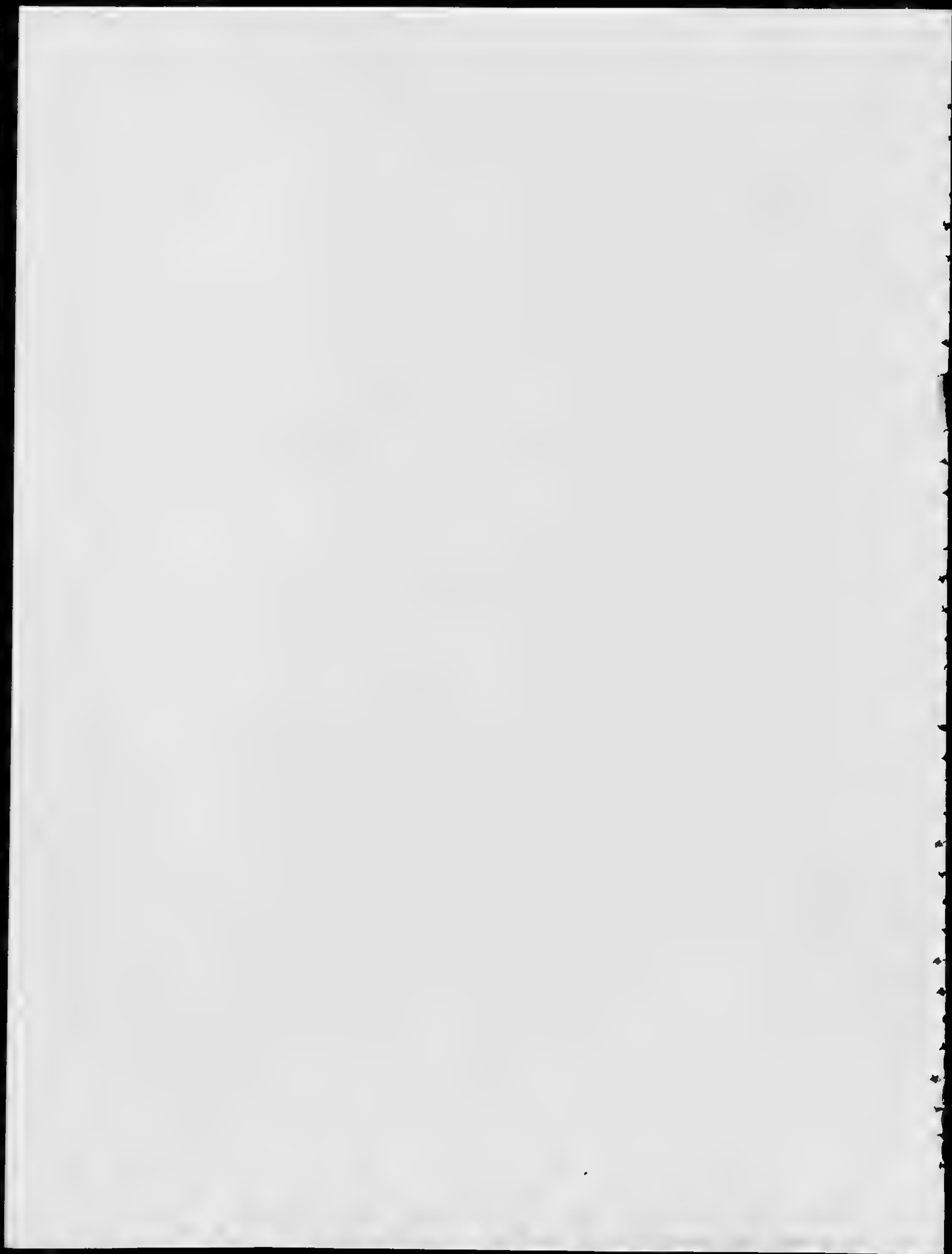
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APPENDIX

STATUTES INVOLVED

Orders of Federal Agencies; Review, 28 U.S.C. 2342, Chapter 158:

The court of appeals has exclusive jurisdiction to enjoin, set aside, suspend (in whole or in part), or to determine the validity of — * * * (3) such final orders of the Federal Maritime Commission or the Maritime Administration entered under chapters 23 and 23A of title 46 as are subject to judicial review under section 830 of title 46 * * *

Orders of Federal Agencies; Review, 28 U.S.C. 2343, Chapter 158:

Venue

The venue of a proceeding under this chapter is in the judicial circuit in which the petitioner resides or has its principal office, or in the United States Court of Appeals for the District of Columbia Circuit.

Judicial Review; Chapter 7, 5 U.S.C. 704:

Actions reviewable

Agency action made reviewable by statute and final agency action for which there is no other adequate remedy in a court are subject to judicial review. * * *

The Shipping Act, 1916, § 18(a), 39 Stat. 735, as amended, 46 U.S.C. 817:

That every common carrier by water in interstate commerce shall establish, observe, and enforce just and reasonable rates, fares, charges, classifications, and tariffs, and just and reasonable regulations and practices relating thereto and to the issuance, form, and substance of tickets, receipts, and bills of lading, the manner and method of presenting, marking, packing,

and delivering property for transportation, the carrying of personal, sample and excess baggage, the facilities for transportation, and all other matters relating to or connected with the receiving, handling, transporting, storing or delivering of property. * * *

Whenever the board finds that any rate, fare, charge, classification, tariff, regulation, or practice, demanded, charged, collected, or observed by such carriers is unjust or unreasonable, it may determine, prescribe, and order enforced a just and reasonable maximum rate, fare, or charge, or a just and reasonable classification, tariff, regulation, or practice.

The Intercoastal Shipping Act, 1933, Sec. 3, 47 Stat. 1426, 46 U.S.C. 845:

Whenever there shall be filed with the board any schedule stating a new individual or joint rate, fare or charge, or any new individual or joint classification, or any new individual or joint regulation or practice affecting any rate, fare or charge, the board shall have, and it is hereby given, authority, either upon complaint, and if it so orders without answer or other formal pleading by the interested carrier or carriers, but upon reasonable notice, to enter upon a hearing concerning the lawfulness of such rate, fare, charge, classification, regulation or practice or upon its own initiative without complaint, * * *



BRIEF FOR INTERVENOR TMT TRAILER FERRY, INC.
(C. Gordon Anderson, Trustee)

IN THE
United States Court of Appeals
FOR THE DISTRICT OF COLUMBIA CIRCUIT

Case No. 21217

SEA-LAND SERVICE, INC., *Petitioner*

v.

FEDERAL MARITIME COMMISSION and
UNITED STATES OF AMERICA, *Respondents*

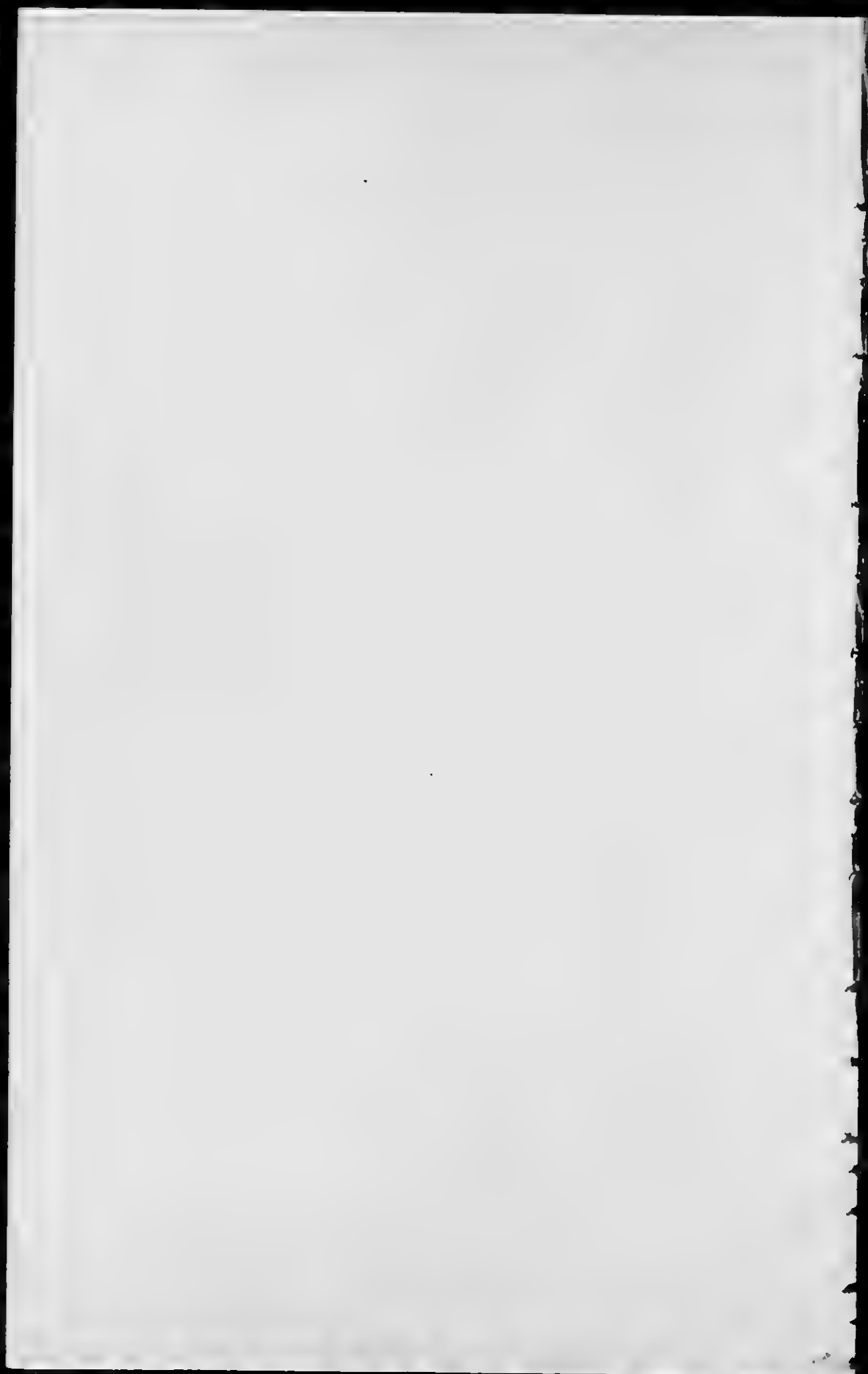
United States Court of Appeals
for the District of Columbia Circuit

FILED JAN 24 1968

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Nat'l J. Paulson
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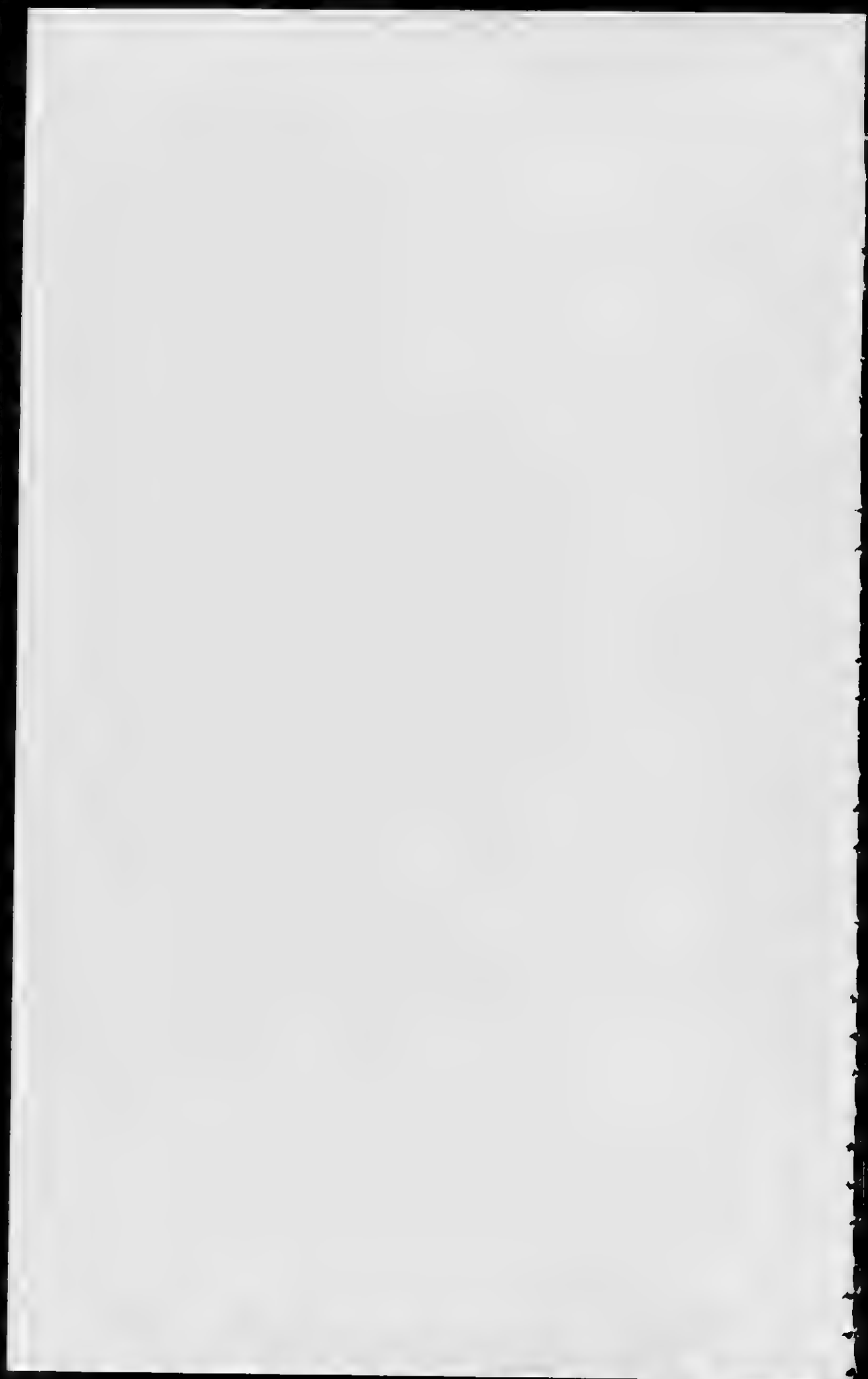


SUPPLEMENTAL STATEMENT OF QUESTIONS PRESENTED

To be added to the eleven questions set out in the petitioner's brief are the following two questions which were permitted by order of the Court dated November 3, 1967, denying intervenor's motion to dismiss or for alternative relief. The two questions are:

1. In view of the fact that the Federal Maritime Commission has entered no order requiring Sea-Land either to act or to refrain from acting, does the report of the Federal Maritime Commission here on review constitute a final agency action reviewable by this Court?

2. Does not the fact that TMT Trailer Ferry, Inc., serves only the ports of Miami and Jacksonville with respect to which it applies its appropriate rates indiscriminately to all shipments, regardless of inland origin or destination, foreclose the Federal Maritime Commission from holding that TMT could, by the levels of those rates or charges, discriminate in favor of Jacksonville and Miami by preferring them to the prejudice of ports not served by TMT?



INDEX

	Page
COUNTER-STATEMENT OF THE CASE	1
STATUTES INVOLVED	3
SUMMARY OF ARGUMENT	3
ARGUMENT	
THERE IS NO ORDER SUSCEPTIBLE TO REVIEW	6
UNDUE OR UNREASONABLE PREFERENCE AND PREJUDICE	9
COMPETITION IN A REGULATED FIELD	19
SECTION 16, FIRST, AND THE NATURALLY TRIBUTARY CONCEPT	23
EVIDENTIAL MATTERS AND AN END TO LITIGATION ..	25
CONCLUSION	27

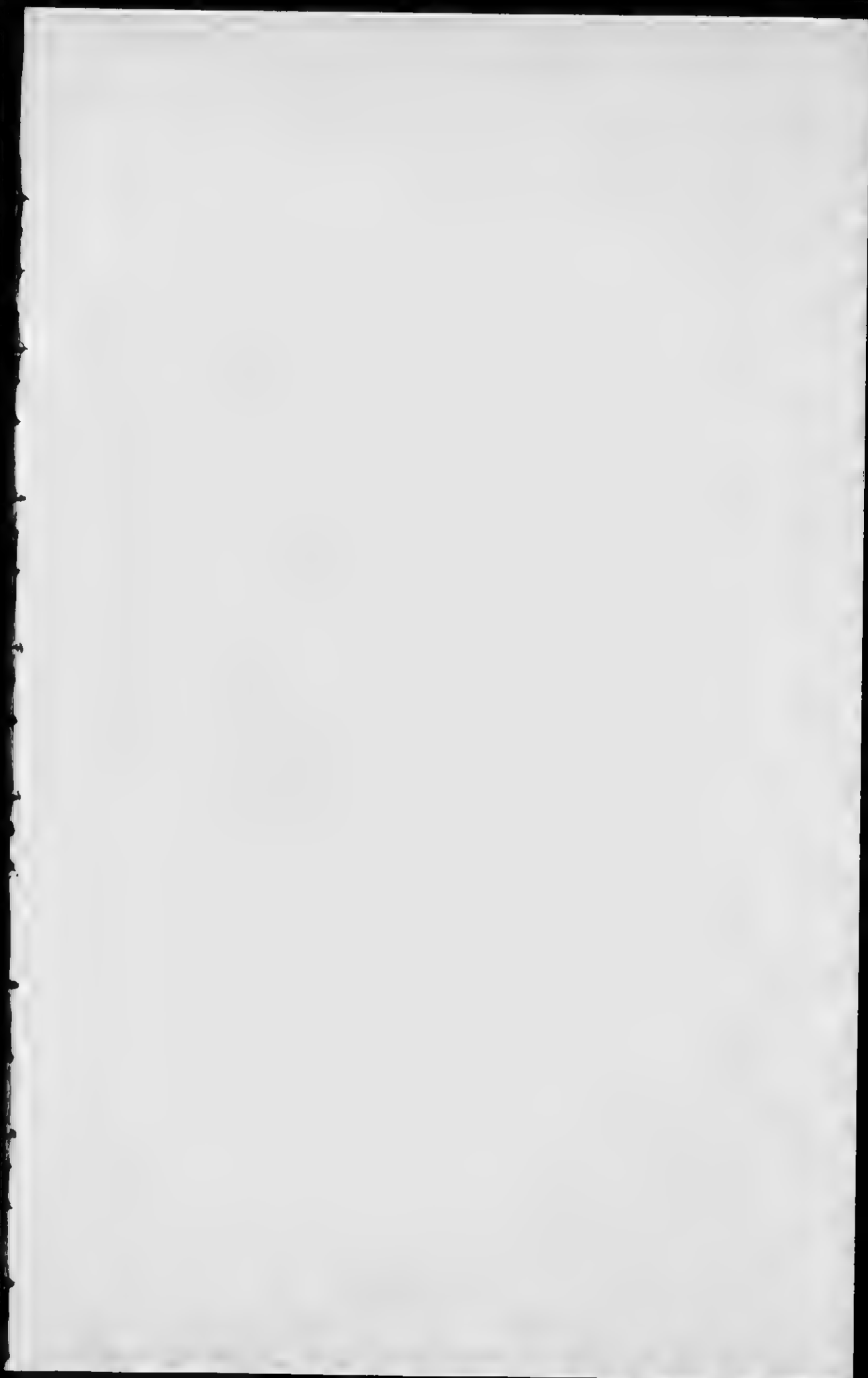
TABLE OF CASES

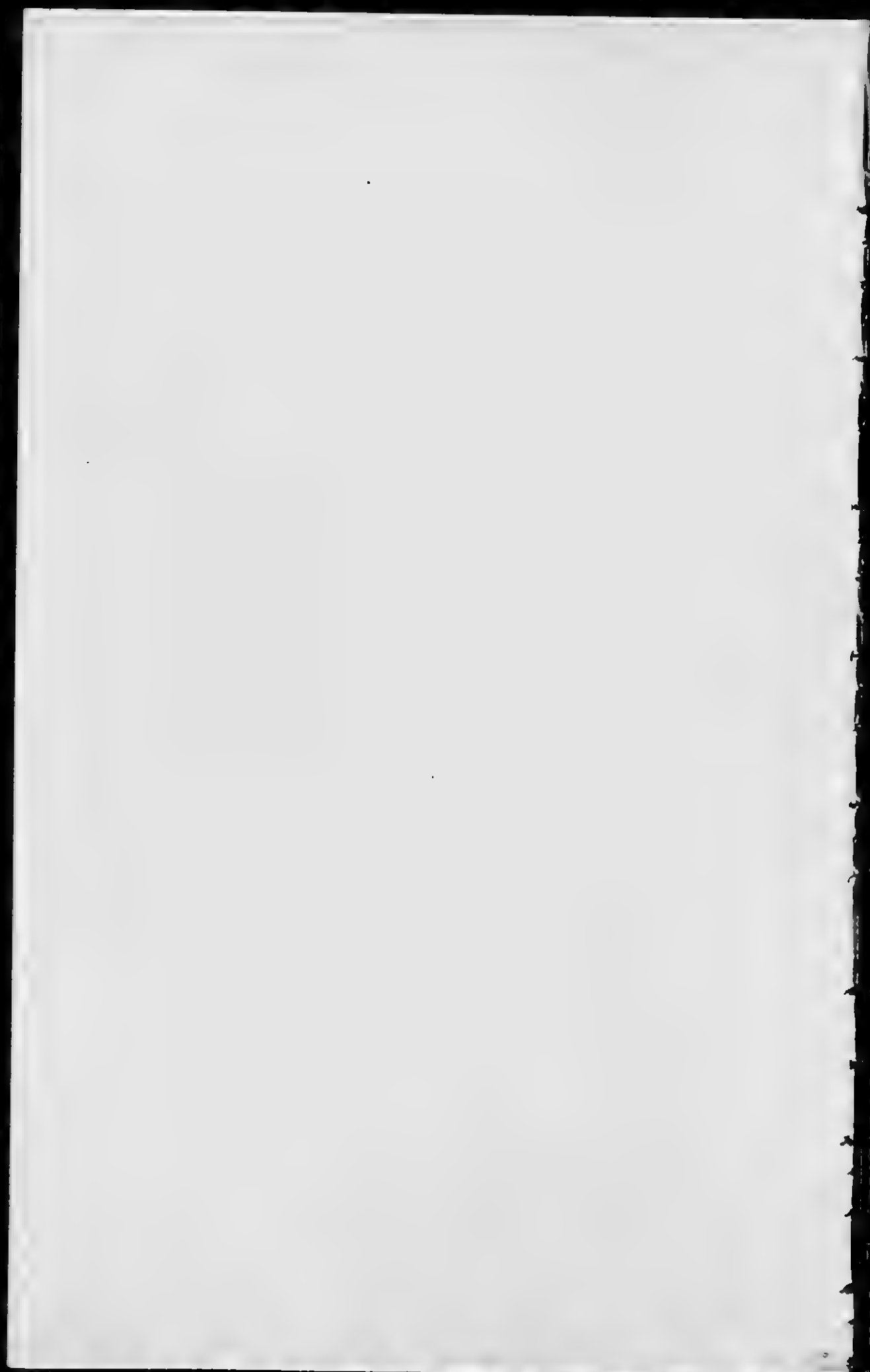
*Carolina Aluminum Co. v. Federal Power Commission, 97 F. 2d 435 (4th Cir. 1938)	4, 8
*Central Railroad Co. of New Jersey v. United States, 257 U.S. 247 (1921)	14, 18
Chesapeake and O. R. Co. v. United States, 283 U.S. 35 (1931)	5, 21
New York v. United States, 331 U.S. 284 (1947) ..	10, 11, 13
Reduced Rates on Machinery and Tractors From United States Atlantic Ports to Ports in Puerto Rico, 9 F.M.C. 465 (1966)	7, 10, 12, 13, 18
Santa Fe Trail Stages, Inc., Common Carrier Application, 21 M.C.C. 725 (1940)	5, 22
Texas and P. R. Co. v. United States, 289 U.S. 627 (1933)	4, 16
TMT Trailer Ferry, Inc. (C. Gordon Anderson, Trustee) v. Federal Maritime Commission and United States of America, (1966), CA 20206	6

* Cases chiefly relied upon are marked by asterisk.

STATUTES

	Page
Interstate Commerce Act, 49 U.S.C. § 1 et seq. . .	11, 13, 14, 15, 16, 18
Orders of Federal Agencies; Review; 28 U.S.C. 2342 . .	7
Shipping Act, 1916, 39 Stat. 728, 46 U.S.C. 801, et seq.	3
Wigmore on Evidence, 3d Ed. (1940)	26





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BRIEF FOR INTERVENOR TMT TRAILER FERRY, INC.,
(C. Gordon Anderson, Trustee)

COUNTERSTATEMENT OF THE CASE

Petitioner's statement of the case is accurate as far as it goes. What needs also to be said is that intervenor, TMT, is not a container-ship operator but, instead, operates a roll-on/roll-off service by which ordinary highway trailers and other wheeled vehicles are transported between Florida ports and Puerto Rico. Intervenor has always operated between those ports as a tug-and-barge service in an effort to keep its cost at a minimum level. Its service is much slower and much less reliable from the standpoint of fixed sailing dates or delivery dates than are the services of its competitors which operate self-propelled vessels.

Since the establishment of the TMT service in 1954, the volume of the traffic moving between the mainland of the United States and Puerto Rico has grown substantially. Petitioner Sea-Land entered the trade as a container-ship operation in 1959 and, in spite of the fact that TMT was already established in that trade, attracted constantly-increased volumes of freight until today petitioner Sea-Land is by far the dominant carrier in the trade. This dominance was achieved even though the rates of Sea-Land have been on a higher level than those of TMT.

In its efforts before the Federal Maritime Commission to eliminate the existing difference between its rates and those of TMT, Sea-Land urged that TMT should be required to raise its rates to the Sea-Land level or, in the alternative, that Sea-Land should be permitted to reduce its rates to the level of those of TMT.¹ The Commission's disposition of that issue and the rationale upon which it rests is found in the concluding two paragraphs of page 8 of the Commission's report:

"TMT's service with respect to the commodities in question is not of such value to shippers that they would continue to patronize TMT irrespective of higher rates. Indeed, TMT will be injured if its rates are increased through loss of traffic upon which the inland rail rate is favorable to North Atlantic ports. TMT would also be deprived of a substantial portion of its cargo from inland-rate-equal origins and from the Jacksonville area as well. At rate parity with Sea-Land, TMT would in all probability be forced out of business. Therefore, TMT's rates must serve as its inducement to shippers.

"Furthermore, Sea-Land has no competitive necessity for lowering its rates and eliminating the TMT differential. Its Jacksonville operation is profitable and its continuance in the trade is not threatened. It carries substantial volumes of cargo in the Jacksonville trade despite TMT's rate advantage. In the face

¹ JA 81-85.

of these facts, Sea-Land would, in establishing rate parity, drive TMT out of business, and thus obtaining virtual control for itself of the trade between Jacksonville and Puerto Rico. We, therefore, will not on this record permit Sea-Land to lower its rates to TMT's levels nor will we order TMT to increase its rates to the levels prevailing in the North Atlantic."

STATUTES INVOLVED

In addition to the statutes printed in the appendix to the petitioner's brief, the following statutory provisions are involved.

Section 16, First, Shipping Act, 1916, 39 Stat. 734, 46 U.S.C. 815

"That it shall be unlawful for any common carrier by water, or other person subject to this Act, either alone or in conjunction with any other person, directly or indirectly—

First, To make or give any undue or unreasonable preference or advantage to any particular person, locality, or description of traffic in any respect whatsoever, or to subject any particular person, locality, or description of traffic to any undue or unreasonable prejudice or disadvantage in any respect whatsoever."

39 Stat. 738, 46 U.S.C. 830

"The venue and procedure in the courts of the United States in suits brought to enforce, suspend, or set aside, in whole or in part, any order of the Federal Maritime Board shall, except as otherwise provided, be the same as in similar suits in regard to orders of the Interstate Commerce Commission, but such suits may also be maintained in any district court having jurisdiction of the parties."

SUMMARY OF ARGUMENT

Treating first the issue respecting reviewability of the considered report of the Federal Maritime Commission, it is submitted that all the Commission has done is to appraise the evidence before it and, after applying the guiding

principles of the regulatory statutes, conclude that no order should be entered. Accordingly, there is nothing for this Court to set aside nor is there any justification for an intrusion by the Court into the regulatory field committed by the Congress of the United States to the administrative agency. *Carolina Aluminum Co. v. Federal Power Commission*, 97 F. 2nd 435 (4th Cir. 1938).

If however, this Court feels disposed to issue what would amount to an advisory opinion, and remand the cause to the Federal Maritime Commission with directions to make additional or different findings, then the Court should also examine and dispose of the question as to the propriety of the Commission's interpretation of that portion of Section 16, First, Shipping Act, 1916, 39 Stat. 734, 46 U.S.C. 815, which prohibits undue and unreasonable preference and prejudice. So long as TMT serves only the mainland ports of Miami and Jacksonville and refrains from so manipulating its rate structure as to prefer certain types of traffic over other types, TMT cannot be guilty of undue or unreasonable preference of the ports it serves to the undue or unreasonable prejudice or disadvantage of ports it does not serve. *Texas and P. R. Co. v. United States*, 289 U.S. 627 (1933).

The other questions presented for disposition here fall naturally into three categories:

1. The regulatory policy of the Commission and the place therein of competition as a regulatory tool. Here are grouped issues 2, 3, 5 and 8.
2. The right of a port to non-discriminatory treatment by the carriers serving it, including the right to enjoy naturally tributary traffic. Here are grouped issues 4, 6 and 7.
3. Collateral matters respecting the discretion of the Commission to put an end to litigation, the assignment, if any, of the burden of proof, and the propriety

of an evidential ruling. Here are found issues 9, 10 and 11.

Dealing with all of the issues in the first of the foregoing groupings, it is plain that the inherent reasonableness of any rate structure is manifested by the ability of the carrier to attract traffic to move thereon. A carrier already shown to be capable of so attracting traffic at an existing relationship between its rates and those of a competing carrier must be motivated by a desire to monopolize if it acts to reduce its rates for the avowed purpose of attracting its competitor's traffic to its own service. For an administrative agency to prohibit such result is to preserve competition as a regulatory tool. Regulatory agencies have long used competition as such a tool and the Supreme Court has approved, *Chesapeake and O. R. Co. v. United States*, 283 U.S. 35 (1931), *Santa Fe Trail Stages, Inc., Common Carrier Application*, 21 M.C.C. 725, 748-749 (1940).

With respect to the obligation of carriers to avoid discriminating between ports served by them, the Federal Maritime Commission has long held that a carrier may not, without good reason, maintain a lower scale of rates from or to one port than it maintains from or to a competing port which it also serves. In the proceeding here on review, Sea-Land failed to submit any evidence which would justify the maintenance by it of lower rates between Puerto Rico and Jacksonville than it maintains between Puerto Rico and the other Atlantic ports which it serves. The only reason advanced by Sea-Land for its proposal to maintain lower rates out of Jacksonville was its desire to equate them with the rates assessed for the inferior service of TMT and, as seen, its motivations in that respect would be destructive of existing competition and would promote monopoly, a result which the Commission properly moved to prevent.

No error was committed by the Commission in the assignment of the burden of proof. Neither was there error in rejection by the hearing examiner of letters solicited for submission as evidence in the case before the Commission. In the absence of the writers of such letters, the contents would have constituted testimony without any opportunity for cross-examination. The examiner's ruling was correct regardless of the reason given for the ruling.

Having concluded, as it did, that there was no competitive necessity for rate equality between TMT and Sea-Land and that no justification had been submitted for the proposed departure by Sea-Land from the requirements of Section 16, First, of the Shipping Act, 1916, there was no compulsion upon the Commission to re-examine all issues before it merely because another carrier had instituted operations between Jacksonville and Puerto Rico. The better administrative policy, and the one followed by the Commission, was to await developments and observe whether or not such operation could be effectively established in the face of the formidable competition already in the trade. There was no abuse of administrative discretion.

ARGUMENT

There Is No Order Susceptible to Review

In a situation almost identical to the one here before it, this Court dismissed as moot a petition of this intervenor, TMT, which sought review of an order of the Federal Maritime Commission which had actually been entered.² Pending such review TMT complied with the Commission's order. After issue had been joined in the proceeding before this Court and after filing by TMT of its brief, the Commission sought and received a remand of the cause for further hearing, pending which it vacated the order of which review had been sought. In its report upon such further hearing, the Commission reiterated its earlier

² C.A. 20206, *TMT Traller Ferry, Inc., (C. Gordon Anderson, Trustee) v. Federal Maritime Commission and United States of America*. (1966)

interpretation of the regulatory statutes and affirmed its earlier findings. It commented, however, that inasmuch as compliance had been made with the now-vacated order, no further order was necessary and it discontinued the proceeding. Thereupon it filed with this Court a motion to dismiss the proceeding for review upon the ground that it was moot, there being no outstanding order with which TMT was required to comply.

The report of the Federal Maritime Commission for which review is sought in this proceeding is on a parity with the report of the Commission on remand which was before this Court in C.A. 20206, namely, Federal Maritime Commission Docket No. 1187, *Reduced Rates on Machinery and Tractors From United States Atlantic Ports to Ports in Puerto Rico*, 9 F.M.C. 465 (1966), report on remand served January 13, 1967, and filed with this Court. In both instances, the Commission ultimately refrained from issuing any order requiring compliance by a carrier subject to its regulatory jurisdiction.

The existence of an order by an administrative agency is a prerequisite to any review by this Court of an agency action. Thus, had petitioner in this proceeding by appropriate complaint or petition sought from the Commission an order permitting or requiring something to be done, and had the Commission issued an order dismissing such complaint or denying such petition, conceivably this Court could review the order denying such relief. But that is not the situation in the case at bar. Here the proceeding before the Federal Maritime Commission arose on the Commission's own motion. The conclusions it reached neither required a change in the existing status of things nor denied to Sea-Land any right which Sea-Land had affirmatively sought by petition or complaint. Title 28 U.S.C. Section 2342, 80 Stat. 622, reads in part as follows:

"The court of appeals has exclusive jurisdiction to enjoin, set aside, suspend (in whole or in part) or to determine the validity of—• • •

“(3) such final orders of the Federal Maritime Commission or the Maritime Administration entered under chapters 23 and 23A of title 46 are subject to judicial review under section 830 of title 46;” • • •”

Section 830 of Title 46 also refers only to suits brought to enforce, suspend, or set aside in whole or in part any “order” of the Federal Maritime Board. In a proceeding involving a similar situation where the power to review related only to “orders”, the United States Court of Appeals for the 4th Circuit dismissed the suit. See *Carolina Aluminum Co. v. Federal Power Commission*, *supra*, in which at page 436 of the opinion the Court said:

“It will be noted that it is an order and not a finding of the Commission which the court is authorized to review; and there would seem to be little room for doubt that by an order is meant some command of the Commission directing or restraining action or granting or denying some form of relief. An ‘order’ is a ‘mandate, precept; a command or direction authoritatively given; a rule or regulation’. Black’s Law Dictionary; 46 C.J. 1131; 42 C.J. 464. An order of the Commission is analogous to the judgment of a court; and it is well settled that findings constitute no part of a judgment even though incorporated in the same instrument with it. 15 R.C.L. 570; *Judge v. Powers*, 156 Iowa 251, 136 N.W. 315, Ann. Cas. 1915B, 280. As said by Judge Learned Hand in *Eckerson v. Tanney*, D.C., 235 F. 415, 418, ‘The judgment itself does not reside in its recitals, but in the mandatory portions.’ In reviewing an order the court may examine the findings to determine whether they support the order and may examine the evidence to determine whether it supports the findings; but the court is given no authority to review a mere finding upon which no order is based, even though it may determine a status which may form the basis of future governmental action, for even such a finding lacks the fundamental characteristics of an order. *Shannahan v. United States*, 58 S. Ct. 732, 82 L. Ed. ; *United States v. Griffin*, 58 S. Ct. 601, 82 L. Ed. ; *Piedmont & N.R. Co. v. United States*, 280 U.S. 469, 50 S. Ct. 192, 74 L. Ed. 551; *United States v. Los Angeles & Salt Lake R. Co.*, 273

U.S. 299, 47 S. Ct. 413, 71 L. Ed. 651; *Lehigh Valley R. Co. v. United States*, 243 U.S. 412, 37 S. Ct. 397, 61 L. Ed. 819; *Brady v. Interstate Commerce Commission*, D.C., 43 F. 2d 847 affirmed *Brady v. United States*, 283 U.S. 804, 51 S. Ct. 559, 75 L. Ed. 1424."

It is submitted, therefore, that this Court ought not to intrude into the regulatory field by expressing its judgment respecting the announced regulatory policies of the Federal Maritime Commission until such time as those policies have been implemented by an order which would require some party to do something, to refrain from doing something, or to forego a right.

Undue or Unreasonable Preference and Prejudice

At page 9 of its report here under review, the Federal Maritime Commission held that "if any injury to a port is caused by the ratemaking practices of a carrier, Section 16, First may be applicable." So saying, the Commission rejected the argument of TMT that inasmuch as it serves only the ports of Jacksonville and Miami, and not the ports to the north thereof which allegedly have been prejudiced, it cannot be guilty of causing that prejudice and thereby of violating Section 16, First. We submit that the Commission erred for the reasons which follow.

In performing service between Puerto Rico and the Florida ports of Jacksonville and Miami, TMT applies its structure of rates indiscriminately to all traffic offered it for transportation. No distinction is made between traffic which moves through Jacksonville and that which moves through Miami. Neither is any distinction made between traffic originating at one inland point as opposed to another or, for that matter, traffic which originates at a point in the locality of either Miami or Jacksonville. Finally, TMT is not a member of any conference or other organization the members of which have agreed respecting the maintenance of any rate or rate structure.

TMT is simply a carrier which in the exercise of its own managerial discretion has fixed its rates at a level which it sincerely believes is necessary to its existence. It takes the position that under such circumstances it cannot be guilty of any violation of Section 16, First, and it distinguishes its situation from those which called for the holdings of the Federal Maritime Commission, or its predecessors in the cases collected in footnote 11 on page 9 of the Commission's report here under review. Each of those cases fits into one or another of the category of things described above as *not* being done by TMT.

The Commission also cited *Reduced Rates on Machinery and Tractors from United States Atlantic Ports to Ports in Puerto Rico*, 9 F.M.C. 465 (1966), as authority for its somewhat surprising interpretation of Section 16, First. As has already been pointed out, TMT, sought review by this Court of the Commission's holding in that case and the Commission successfully resisted such review. The Commission's holding there surely cannot now be relied upon to foreclose an examination by the Court of the validity of the Commission's interpretation.

In *Reduced Rates on Machinery and Tractors, supra*, the Federal Maritime Commission relied entirely upon the holding of the Supreme Court of the United States in *New York v. United States*, 331 U.S. 284 (1947), in which the Supreme Court sustained an order of the Interstate Commerce Commission requiring the establishment and maintenance by the railroads of a system of uniform class rates designed to eliminate territorial differences theretofore existing. As the basis for its own holding, the Federal Maritime Commission quoted from the opinion of the Supreme Court as follows:

"If the hands of the Commission are tied and it is powerless to protect regions and territories from discrimination unless all rates involved in the rate relationship are controlled by the same carriers, then . . . § 3(1) fell far short of its goal. We do not believe Congress left the Commission so impotent."

The Federal Maritime Commission omitted from the above quotation four words which rendered the statement utterly inapplicable to its own case. Those four words are "the 1940 amendment to". Stated otherwise, the Supreme Court said that it was the 1940 amendment which vested the Interstate Commerce Commission with the power to do what it did in the *New York* case. There is no similar authorization of the Federal Maritime Commission.

Commencing at page 296 of its opinion in *New York v. United States*, *supra*, the Supreme Court traced the legislative history of Section 3(1) of the Interstate Commerce Act culminating in the amendment of that section by the Transportation Act of 1940 which added the very provisions under which the Interstate Commerce Commission had acted in the case before the Supreme Court on review. The Court said:

"The principal evil at which the Interstate Commerce Act was aimed was discrimination in its various manifestations. *Louisville & N. R. Co. v. United States*, 282 U.S. 740, 749, 750. Until 1935, § 3(1) of the Act prohibited discrimination only against a 'person, company, firm, corporation, or locality, or any particular description of traffic.' [February 4, 1887] 24 Stat. 379, 380, c. 104, 49 U.S.C. § 3(1). The question arose whether 'locality' included a port insofar as the port was not a point of origin or destination but a gateway through which shipments were made. The Court held by a closely divided vote, and contrary to the ruling of the Commission, that it did not. *Texas & P. R. Co. v. United States*, 289 U.S. 627. Thereafter Congress amended § 3(1) so as to extend the prohibition against discrimination to include a 'port, port district, gateway, transit point.' [August 12, 1935] 49 Stat. 607, c. 509, 49 U.S.C. § 3(1). And see *Albany Port Dist. Commission v. Ahnapee & W. R. Co.*, 219 Inters. Com. Rep. (F) 151. That was in 1935. In 1940 Congress went further. By § 5(b) of the Transportation Act, of [September 18] 1940, 54 Stat. 899, 902, c. 722, 49 U.S.C. § 3 note, known as the Ramspeck Resolution, it authorized and directed the Commission to institute an investigation into the rates on commodi-

ties between points in one classification territory and points in another territory and into like rates within territories for the purpose of determining whether those rates were 'unjust and unreasonable or unlawful in any other respect in and of themselves or in their relation to each other, and to enter such orders as may be appropriate for the removal of any unlawfulness which may be found to exist . . . ' Congress also extended the prohibition against discriminations by adding to § 3(1) the words, 'region, district, territory.'"

In a later portion of its opinion the Court used the language upon which the Federal Maritime Commission relied for support in *Reduced Rates on Machinery and Tractors*, *supra*. The Court said at page 341, et seq.:

"In *Texas & P. R. Co. v. United States*, *supra*, (289 U.S. p. 650), it was also stated that, 'A carrier or group of carriers must be the common source of the discrimination—must effectively participate in both rates, if an order for the correction of the disparity is to run against it or them.' And it was held in *Central R. Co. v. United States*, 257 U.S. 247, 259, that mere participation in joint rates does not make connecting carriers partners in discrimination; that they can be held responsible for unjust discrimination only if each carrier has participated in some way in the practice which causes the discrimination, 'as where a lower joint rate is given to one locality than to another similarly situated.' It is argued that the same rule applies in this case since, for example, the western carriers have no control of or participation in the lower official intra-territorial rates, although they do participate in the joint or through interterritorial rates.

"In reply it is said that carriers in Official Territory control rates within that area and also control, jointly with the carriers in each of the other territories, the rates from each of them into Official. That common source of discrimination is said to be sufficient to sustain the Commission's action. See *St. Louis S. W. R. Co. v. United States*, 245 U.S. 136, *Chicago, I. & L. R. Co. v. United States*, 270 U.S. 287. But we do not need to decide the question. For the principle an-

nounced in *Central R. Co. v. United States*, 257 U.S. 247, and *Texas & P. R. Co. v. United States*, 289 U.S. 627, both *supra*, is applicable only where the Commission is directing the carriers to remove the discrimination. Those cases hold that the Commission may not require carriers to do what they are powerless to perform. But the Court recognized in *Central R. Co. v. United States*, *supra*, (257 U.S., p. 257), that where the Commission acts pursuant to § 1 to require carriers to establish, in connection with through routes and joint rates, reasonable rules and regulations, that problem is not involved. For then the Commission corrects the unlawful discriminatory practice in the case of each carrier by prescribing the just and reasonable rate or practice. The same is true where, as here, the Commission in order to eliminate territorial discriminations proceeds under § 15(1) to fix new reasonable rates. If the hands of the Commission are tied and it is powerless to protect regions and territories from discriminations unless all rates involved in the rate relationship are controlled by the same carriers, then the 1940 amendment to § 3(1) fell far short of its goal. We do not believe Congress left the Commission so impotent.*

"It may not be said in this case, as it was held in *Texas & P. R. Co. v. United States*, *supra*, (289 U.S. p. 633), that there was no evidence of the unreasonableness of the rates, or that that question was not in issue. The Commission here found that the rates were unjust and unreasonable under § 1 and it proceeded to fix new rates under § 15(1). The facts which establish that the differences in rates as between the several territories are not warranted by territorial conditions plainly sustain its findings under § 1."

Bearing in mind that the Commission has in its report here under review re-asserted its interpretation of Section 16, First, it is important to note that there are two vital distinctions between this case and the class rate investigation under review by the Supreme Court in *New York v.*

* The underscored portion identifies the words which were eliminated from the quotation in the opinion of the Federal Maritime Commission in *Reduced Rates on Machinery and Tractors*, *supra*. Its significance is obvious.

United States, supra. First, the class rate investigation had taken place under Congressional direction to remove unlawful relationships between rates in the several classification territories and, what is more important, the order of the Interstate Commerce Commission stemming from that investigation had been entered under an amendment to the statute which declared unlawful any undue preference or prejudice *on a territorial basis*. The Federal Maritime Commission has no such directive and is empowered by no similar provision of law.

The second vital distinction between the class rate investigation by the Interstate Commerce Commission and the proceeding before the Federal Maritime Commission now before this Court is that in the former a finding of unreasonableness had been made wholly separate and apart from the issue of undue preference and prejudice. In this case there is no finding of unreasonableness of any existing rate.

We come back, then, to the question of whether or not a carrier can be guilty in law of discrimination when that carrier has no control over and does not even participate in the rates, charges, or practices affecting the person, locality, or description of traffic against which the carrier is said to have discriminated. In *Central Railroad Co. of New Jersey v. United States*, 257 U.S. 247 (1921), the Central of New Jersey, along with the Pennsylvania Railroad and 21 other eastern railroads, sought relief from an order of the Interstate Commerce Commission which had held them in violation of § 3(1) of the Interstate Commerce Act by reason of their failure to provide a creosoting in transit privilege at Newark, New Jersey, similar to that which was provided by southern and midwestern carriers with which the eastern carriers had joined in the publication of through rates applicable to the transportation of lumber. The Supreme Court stated at pages 255-256 of its opinion:

"Under the rules of the Commission governing the making, filing, and publishing of tariffs, privileges like creosoting in transit are treated as a matter local to the railroad on which the transit point is situated. Whether the privilege shall be granted or withheld is determined by the local carrier. If granted, the local carrier determines the conditions; and these are set forth in the local tariff. Although a joint through route with joint rates is established by concurrent action of several carriers, the transit privilege may thus be granted by a carrier without the consent of, and without consulting, connecting carriers. And the whole revenue received for use of the privilege is retained by the local carrier. The appellants did not participate in any way in establishing the transit privileges enjoyed by competitors of the Newark concern on lines of the southern and midwestern carriers; and none of those carriers is controlled by any of the appellants. But appellants did join with those southern and mid-west railroads in establishing joint rates on forest products over routes which pass through the points at which this privilege prevails, and also through Newark."

The Court commented that the Interstate Commerce Commission has power under Section 1 of the Act to Regulate Commerce⁴ to determine upon a proper record that it was unreasonable for the Central and Pennsylvania to decline to provide the transit privilege. Likewise, said the Court, the Commission could have found on a proper record that it was unreasonable under Section 1 for the midwestern and southern lines to continue to provide the transit privilege. The Commission did neither. Instead, it sought to accomplish under Section 3 that which it had specifically declined to order under Section 1. This, the Court held, the Commission was without jurisdiction to do.

The Court pointed out at page 259 of its opinion that to bring a carrier's act within the proscription of Section 3, there has to be some responsibility upon the carrier for both the preference and prejudice. In the Court's lan-

⁴ The original title of the Interstate Commerce Act.

guage, carriers "can be held jointly and severally responsible for unjust discrimination only if each carrier has participated in some way in that which causes the unjust discrimination; as where a lower joint rate is given to one locality than to another similarly situated." The Court then said with respect to Section 3 of the Act to Regulate Commerce:

"What Congress sought to prevent by that section, as originally enacted, was not differences between localities in transportation rates, facilities, and privileges, but unjust discrimination between them *by the same carrier or carriers*. Neither the Transportation Act 1920, February 28, 1920, Chap. 91, 41 Stat. at L. 456, nor any earlier amendatory legislation, has changed, in this respect, the purpose or scope of § 3." (Emphasis added)

The *Central of New Jersey* case was cited with approval by the Supreme Court some twelve years later in *Texas & P. R. Co. v. United States*, 289 U.S. 627 (1933), in which the Texas and Pacific Railway Co. and the Louisiana Railroad & Navigation Co. sought relief from an order of the Interstate Commerce Commission holding them to be in violation of § 3(1) of the Interstate Commerce Act for maintaining lower rates to New Orleans than were maintained by other carriers to the Port of Galveston. The opinion of the Supreme Court recites the salient facts so well that we quote extensively from that opinion, commencing at page 646:

"The Commission's action is challenged for another, and wholly independent reason, which, if sustained, also requires a reversal of the decree. By its second order the Commission excluded the Texas & Pacific and the L. R. & N. from its findings of undue preference and prejudice and exempted them from the requirement as to differentials. The Texas & Pacific had been included by the first order on the theory that it was part of the Missouri Pacific System which served both New Orleans and the Texas ports. Upon rehearing the conclusion was that the line was independently

operated. Exemption was thereupon granted both appellants pursuant to a rule which the Commission had consistently followed since its organization: namely, that a carrier may not be held responsible for undue prejudice or preference unless both of the localities affected are upon its lines, or it effectively participates in the rates to both."

At pages 648 to 650 of the opinion the Court said:

"The classical case of discrimination in rates is presented where a single carrier serving two points approximately equidistant from a common origin on the carrier's line, exacts unequal rates for the two hauls. Not only is the prejudice obvious, but equally so the ability of the carrier to abate it by raising the rates to the point enjoying the lower rates, or decreasing those to the point subject to the higher charge. The principle comprehends, as well, instances of joint rates where the same carriers participate in the rates to both points, and where the originating (or delivering) carriers are different, but the delivering (or originating) carriers are the same. So, too, a carrier may be responsible for preference or prejudice where it participates in one of several through routes between point of origin and the prejudiced destinations, although its own line may reach only one or neither of the latter, *St. Louis S. W. R. Co. v. United States*, 245 U.S. 136, for the discrimination is brought about by the disparity of rates, and the order requiring its abatement necessarily runs against all the carriers parties to them. If one or more of the railroads whose lines make up the through route should refuse, upon an order to equalize rates, to afford one of the others a proper division of the rate, the latter may obtain redress from the Commission under § 15(6). Where, however, a carrier whose lines reach, or which controls the rate to, one of the destinations, is a party to a joint rate to the other but cannot make or control the latter rate, or though it were to withdraw as a party thereto, or to cancel the rate, the discrimination would still continue—it cannot be held responsible, nor can any order to remove the prejudice run against it. This rule has been consistently applied in respect of export and import rates to the ports. The reason for

the doctrine is that preference or prejudice can be found only by a comparison of two rates. If these are the rate of one carrier to point A and that of another to point B while a relationship of one to the other may be determined neither the first nor the second carrier alone can be held to have created the relation. Assuming that neither rate is unreasonable, the one carrier cannot be compelled to alter its rate, because the other's is higher or lower for the same service. A carrier or group of carriers must be the common source of the discrimination—must effectively participate in both rates, if an order for correction of the disparity is to run against it or them."

There can be no question about it. Section 16, First, of the Shipping Act, 1916, must be construed as was Section 3(1) of the Interstate Commerce Act prior to its amendment by the Transportation Act of 1940. It is impossible, therefore, to ascribe to Congress in the adoption of the Shipping Act, 1916, the intent and purpose it articulated when in 1940 it extended the scope of Section 3(1) of the Interstate Commerce Act to embrace territorial preferences and prejudices. This becomes even more clear when note is taken of the fact that Congress amended Section 16 of the Shipping Act, 1916, in 1936 [49 Stat. 1518] and, again in 1961 [75 Stat. 766] without changing that portion of Section 16, First, upon which the Federal Maritime Commission relied in its report in *Reduced Rates on Machinery and Tractors, supra*, and has re-affirmed in the report here under review. The principle of *Central R. R. Co. of New Jersey v. United States, supra*, as above discussed becomes fully applicable to the case at bar. TMT cannot be held to have preferred the only ports it serves as against ports it neither serves nor affects.

Competition in a Regulated Field

Petitioner Sea-Land has alleged that it has a legal right to fix its rates at the same level as are the rates of TMT and that the Commission has erred in holding that to permit Sea-Land to meet the rates of TMT would be to eliminate TMT from the competitive arena. Sea-Land has also said that there is no evidence supporting the Commission's conclusion.

Bearing in mind that Sea-Land has come to the Puerto Rican trade long after the establishment of the roll-on/roll-off service of TMT, it is instructive to observe the relative volumes of freight presently transported by the competing carriers as shown in the following table which has been compiled from exhibits 2, 17 and 27 [JA 134-35, 173-75, 211] in the record before the Federal Maritime Commission. The dominance of Sea-Land is so great as to render ludicrous the argument of Sea-Land that it cannot compete with TMT.

1964 REVENUES OF SEA-LAND AND TMT
ON TRAFFIC MOVING TO PUERTO RICO

	<i>Sea-Land</i>	<i>TMT</i>
Machinery	\$ 273,838	\$183,100
Refrigerators	163,245	404,000
Furniture	418,223	430,000
Stoves	97,907	202,000
Household Goods	285,623	88,000
Laundry Equipment	40,338	190,000
Electrical Equipment	642,418	158,000
Food Products	823,839	113,200
Autos Freight	612,489	54,500
Vehicles Other Than Motor	4,972	55,000
Building Materials	55,370	45,800
Drugs	125,200	25,100
Manufactured Iron and Steel	617,251	122,500
Containers	109,658	1,000
Dry Goods	648,741	17,100
Cotton Piece Goods	319,010	800
Poultry	551,865	0

	<i>Sea-Land</i>	<i>TMT</i>
Meat	520,744	0
Feed	364,142	†
Bottles	338,700	2,000
Cigarettes	331,642	0
Paper—Cleansing	330,325	0
Paper—Boxes	232,904	14,600
Paper—Wrapping	63,237	0
LTL—\$10	320,323	•
Potatoes	285,653	0
Cargo, N.O.S.	276,635	66,500
Tobacco Leaf	217,201	4,900
Eggs in Shell	233,440	See Refrig. NOS
Detergent, Soap	378,169	10,000
Sandals, Shoes	277,763	0
Tin Cans, SU & KD	288,466	600
Plumbing Materials	259,913	17,100
Synthetic Yarn	179,646	16,200
Paint, NOS	168,427	24,000
Freight, All Kinds	1,839,158	0
Refrigerated, N.O.S.	166,692	8,700
Ice Cream	111,000	See Refrig. NOS
Produce	297,949	0
Catalyst	117,108	0

* Note: TMT revenue from LTL reflected in general figures.

Sea-Land has urged that the testimony of its officials and traffic representatives before the Federal Maritime Commission should have been accepted by that agency as dispositive proof and that the testimony of the officials and traffic representatives of TMT should have been rejected as "self-serving."

In the first place, there is no rule of evidence which renders testimony inadmissible simply because it is self-serving. All testimony voluntarily offered by a litigant is self-serving in the sense that it is offered to advance that litigant's cause. In the second place, the testimony of the officials and traffic representatives of both litigants would necessarily stand on the same plane if the characterization

of self-serving is to be applied and, in the third place, the Commission is the trier of the facts.

In the final analysis, the exercise by the Federal Maritime Commission of its own expertise in evaluating the testimony of traffic and transportation people must be respected in this instance.

What the Commission found was that at equal rates shippers would normally utilize the superior of two competing services and that, all factors considered, the service of Sea-Land is superior to that of TMT. In reaching that conclusion, the Commission necessarily considered *all* evidence before it, including that of the representatives of this intervenor.⁵

The Federal Maritime Commission, after finding that at equal rates TMT would likely be driven from the field, concluded that the best interests of its regulatory goals will be served by the preservation of TMT. In so doing it has followed a course well marked years earlier by its sister regulatory agency, the Interstate Commerce Commission.

In *Chesapeake and O. R. Co. v. United States*, *supra*, the Chesapeake and Ohio Railway sought to set aside an order of the Interstate Commerce Commission authorizing the Norfolk and Western Railway and the Virginian Railway to construct certain new lines for the purpose of promoting and preserving competition between and among those two railroads and the Chesapeake and Ohio. The latter carrier challenged the right of the Interstate Commerce Commission so to do. The Supreme Court of the United States, while recognizing there was no specification of the considerations by which the Commission was to determine whether or not a proposed railway construction was required by the public convenience and necessity, said it was the duty of the Commission to determine the basic question

⁵ JA 97-105, 105-09, 109-24, 201-10.

by the exercise of reasonable judgment. The Court then proceeded to find that the preservation or promotion of competition was a proper consideration in the formulation of such a judgment. In short, the regulatory agency had the right to utilize and promote competition among the carriers it regulates for the ultimate purpose it seeks to achieve.

In similar fashion, the Interstate Commerce Commission found in *Santa Fe Trail Stages, Inc., Common Carrier Application*, 21 M.C.C. 725 (1940), that certain bus carriers and certain railroads were endeavoring to establish a bus-transportation monopoly in transcontinental bus traffic. The Commission held at pages 748 to 750 of its report that it could under such circumstances, authorize the establishment of a new service even though the service of the existing carriers was wholly adequate.

Rather than inhibiting the ability of Sea-Land to compete with TMT, the Commission has, in the proceeding here under review, acted to preserve the existence of TMT as a competitive factor in a trade which Sea-Land now threatens to monopolize. The Commission has obviously acted within its administrative jurisdiction and has adequate support for its findings. Sea-Land has urged, however, that the Commission's action in refusing to permit Sea-Land to drive TMT from the competitive arena is contrary to the stated purposes of the Shipping Act, 1916 (46 U.S.C. 801 et seq.) and the Merchant Marine Act, 1936 (46 U.S.C. 1101 et seq.) as expressed in the declarations of policy preceding those statutes. Sea-Land reads those declarations as limiting the Commission's discretion rather than broadening it. Obviously, as is plain from the declaration of policy of the Merchant Marine Act, 1936, the Commission has been vested with a broad discretion in this respect and it is entirely consistent with the proper exercise thereof that the Commission conclude that the establishment of a monopoly would be adverse to the regulatory goal. What Sea-Land has said is that the Court should hold that the

Commission erred in failing to conclude that the establishment of a monopoly by Sea-Land would be a good thing for the Merchant Marine and would be consistent with the purpose and intent of Congress. We flatly disagree.

Section 16, First, and the Naturally Tributary Concept

As the Commission so clearly recognized in the proceeding before it, the naturally tributary concept as used in the words of Section 16, First, is an economic concept. It depends upon a variety of things, including the total cost of transportation to a shipper, the value of the service, and other considerations. A factory in Peoria, Illinois, for example, desiring to ship a consignment of its products to Puerto Rico would ascertain the availability of boat service from ports which it might reasonably reach by rail or motor carrier. It would also ascertain the aggregate cost of the total transportation, both the overland portion and the carriage by water beyond, through the available ports. It would then give consideration to the nature of the transportation available and ultimately make a selection based upon its composite evaluation of services and costs. In making this ultimate evaluation it is quite plain, and the Commission so found, that a given shipper might well find the scales tipped in favor of TMT because of the cost-saving possible. In the absence of such saving, however, the superiority of the Sea-Land services would make it a better bargain and the shipper would elect to use that carriage. By the same token, a shipper whose inland cost of transportation might be lower to a north Atlantic port from which the low-cost service of TMT is not available, might well elect to ship by TMT if TMT's lower rates more than offset the added cost of shipping overland to Jacksonville. For such a shipper, and perhaps for just a particular shipment, economy outweighs excellence of service and for that particular shipment the point of origin is more naturally tributary to Jacksonville than it is to one of the north Atlantic ports, regardless of difference in

the overland transportation charges. The reason, of course, is that Jacksonville can offer the shipper a service by TMT while the north Atlantic ports cannot. To deny the shippers this right to select carrier, route, and port would be, as the Federal Maritime Commission recognized, to allocate traffic arbitrarily.

On the other hand, there is no merit in the contention of Sea-Land that the Federal Maritime Commission erred in declining to authorize it to reduce its rates between Puerto Rico and Jacksonville solely upon the ground of the existence at Jacksonville of a competitor which does not exist at the north Atlantic ports. As has already been seen, the competition at Jacksonville has not prevented the growth and development of Sea-Land's service to its present pre-eminent position in the Puerto Rican trade. The Commission correctly found that no downward adjustment of the rates of Sea-Land is necessary in order to enable it to continue its service at the port of Jacksonville. Accordingly, the reduction of Sea-Land's rates to and from that port would produce no economic benefit but certainly would create a situation under which there would be diverted from other ports traffic which, in the absence of the Jacksonville reduction, would be naturally tributary to them.

As has been pointed out above, a shipper at an inland point from which the overland transportation charge would be less to a north Atlantic port than to Jacksonville might well elect to ship through his closest port in order to secure the benefits both of the lowest overland transportation cost and the best ocean transportation available or he might elect to ship through Jacksonville sacrificing time and reliability in favor of a lower total cost. But if a shipper at that same inland point were offered the same ocean service at a lower charge out of one port than out of another he would almost automatically elect to use that port where his costs were the lowest. Indeed, if the representative of Sea-Land were permitted to reduce its rates out of Jacksonville there would surely be diverted to that

port traffic which Sea-Land now handles through north Atlantic ports.⁶ It was on this basis that the Federal Maritime Commission found that it would be violative of Section 16, First, for Sea-Land to reduce its rates out of Jacksonville without a concurrent reduction in equal amount from the other ports which it serves. Sea-Land's use of the existence at Jacksonville of competition from TMT as justification for different rate treatment of Jacksonville is without merit for the reasons above stated and the holding of the Commission in this respect has been entirely proper.

Evidential Matters and an End to Litigation

Sea-Land's brief urges that the Commission has erred in three respects which are procedural rather than substantive. First, it is argued that the Commission erred by not admitting to evidence certain letters written by people who were not available for cross-examination. Second, it is said that the Commission erred in assigning to Sea-Land a burden of proof respecting its cost capacity to reduce rates out of Jacksonville without a concurrent reduction out of the north Atlantic ports. Third, and last, it is urged that the Commission erred in not reopening the proceeding for further hearing. We now address ourselves to those three contentions.

At the hearing before the Commission's examiner, Sea-Land tendered copies of 18 letters which it had received in response to an inquiry by it submitted to all 18 of the writers.⁷ No effort was made to produce the writers of those letters as witnesses, but it was nonetheless seriously contended by Sea-Land that the letters were admissible to prove that the existing difference in rates rendered it incapable of competing with TMT and that at equivalent rates the traffic would be divided between it and TMT. It is hornbook law that in circumstances such as those described

⁶ JA 86-88.

⁷ JA 88-89.

above letters are not admissible as evidence unless the writers thereof are present for cross-examination.⁸ It doesn't matter that the Examiner excluded the letters for some different or unrelated reason. They were properly excluded and that is the important consideration.

The argument of Sea-Land respecting the alleged assignment of the burden of proof is utterly without merit. As we read its brief, Sea-Land contends because it had not yet published lower rates through Jacksonville than through ports in the north and, therefore, had no rates under suspension pursuant to Section 3 of the Intercoastal Shipping Act, 1933, it had no statutory burden of justifying its proposal to publish such lower rates. What its argument comes down to is that it has no burden whatever in an investigation on the Commission's own motion, may in such proceeding withhold evidence peculiarly in its own possession, and yet may complain to this Court because the Commission finds it has failed to provide sufficient evidence upon which to predicate a finding favorable to it. The argument defies logic and reason. Moreover, the proponent of any rule has the burden of justifying it⁹ and Sea-Land, when before the Commission, was certainly the proponent of the rule for which it still contends.

Finally, Sea-Land asks this Court to intercede for it because the Commission declined to reopen the proceeding upon a petition by Sea-Land seeking that action. Again, a procedural matter is advanced as a reason for interposition by this Court in administrative proceedings. We ask the Court to bear in mind that no order has been issued by the Federal Maritime Commission which has had an affirmative impact on Sea-Land. Sea-Land is still free, as it has always been, to institute by tariff publication or by complaint such proceeding before the Board as it deems appropriate. The commencement of service by another car-

⁸ V Wigmore on Evidence (3d ed. 1940) § 1362.

⁹ IX Wigmore (3d ed. 1940) § 2487(a).

rier out of Jacksonville is not a circumstance that changes that basic fact and the Commission was fully justified in declining to extend the proceeding before it for such a barren reason. There must be an end to every litigation and, certainly, the time to end this one had arrived when Sea-Land elected to withhold from the Commission evidence which only Sea-Land could have submitted.

CONCLUSION

The administrative decision here under consideration does not qualify for plenary review. The complaint should be dismissed on that ground.

If, however, the Court is disposed to review what the Federal Maritime Commission has done in this instance, there are two holdings of importance, the first relating to administrative policy and the second to an interpretation of statutory provisions.

The Commission's interpretation of Section 16, First, of the Shipping Act, 1916, is erroneous and, for the guidance of the Commission in the future, the Court should so state.

Respectfully submitted,

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DATED: December 13, 1967

BRIEF FOR RESPONDENTS

IN THE UNITED STATES COURT OF APPEALS
FOR THE DISTRICT OF COLUMBIA CIRCUIT

NO. 21,217

SEA-LAND SERVICE, INC.,

Petitioner,

v.

FEDERAL MARITIME COMMISSION
and UNITED STATES OF AMERICA,

Respondents,

TMT TRAILER FERRY, INC.
(C. Gordon Anderson, Trustee)

Intervenor,

ON PETITION TO REVIEW AN ORDER OF
THE FEDERAL MARITIME COMMISSION

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United States Court of Appeals
for the District of Columbia Circuit

FILED JAN 26 1968

Nathan J. Paulson

QUESTIONS PRESENTED

1. Does petitioner bring before the court any final order or final action of the Federal Maritime Commission which is subject to judicial review?
2. Are the Commission's findings that at parity rates with Sea-Land between Jacksonville and Puerto Rico, TMT would not be able to compete and that Sea-Land has no competitive necessity for lowering its rates to the TMT level, based on adequate subordinate findings and supported by substantial evidence?
3. Did the Commission err in forbidding Sea-land to lower its rates between Jacksonville and Puerto Rico to the level maintained by TMT if the record shows that such lower rates would be fully compensatory; and in the absence of a finding that they would not be fully compensatory or that they would be unduly preferential or prejudicial or otherwise in violation of the law?
4. Did the Commission err in finding not justified Sea-Land's proposed rate policy of reducing its rates between Jacksonville and Puerto Rico to the same level maintained by TMT, without simultaneously effecting comparable reductions between North Atlantic ports and Puerto Rico, even though TMT rates between Jacksonville and Puerto Rico are lower than rates applied between North Atlantic ports and Puerto Rico?
5. Did the Commission err in finding that Sea-Land has no competitive necessity to reduce its rates between Jacksonville and Puerto Rico for the reason that its operation is profitable and the continuation of its service is not threatened?
6. Did the Commission err in finding no violation of section 16 First of the Shipping Act, 1916, when the record shows that the existing TMT rates attract

cargo from origins which, based on inland rail rates are tributary to North Atlantic ports?

7. Did the Commission err as a matter of law and act in contravention of section 8 of the Merchant Marine Act, 1920 (46 U.S.C. 867) in its interpretation of the term "naturally tributary" to the ports, and in protecting TMT from the loss of traffic from areas naturally tributary to ports that it does not serve?

8. Is the Commission's conclusion that the Puerto Rico trade is "best regulated and coordinated" by preservation of TMT's service (Report, p. 11) supported by subordinate findings, based on substantial evidence and in accordance with the law?

9. Did the Commission err in refusing to allow Sea-Land to reduce its Jacksonville - Puerto Rico rates to the TMT level, in refusing to take into account, or reopen the proceeding for the taking of evidence with respect to the entrance of another trailership carrier in the Jacksonville - Puerto Rico trade, whose rates are generally the same as those of TMT?

10. Did the Commission err in holding that Sea-Land has the burden of proof of justifying the proposed rates even though they were not placed under suspension?

11. Did the Commission err in failing to reverse the Examiner's exclusion from the record of letters from shippers (Exhibit 18 for identification)?

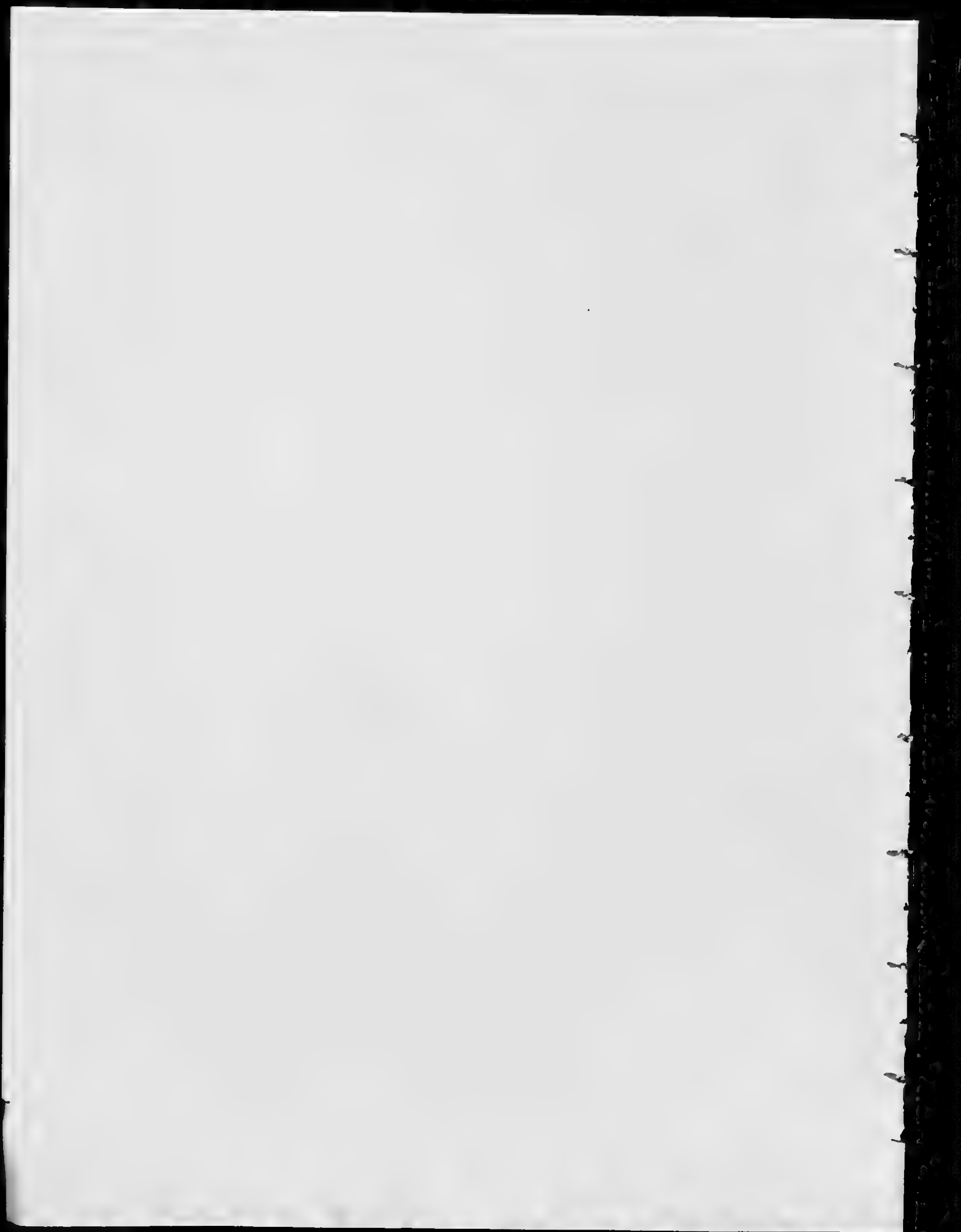
INDEX

	<u>PAGE</u>
QUESTIONS PRESENTED.....	i
COUNTERSTATEMENT OF THE CASE.....	1
I. BACKGROUND OF THE JACKSONVILLE RATE CONTROVERSY.....	1
A. <u>The Parties</u>	1
B. <u>The Rates</u>	3
II. THE ADMINISTRATIVE PROCEEDINGS.....	4
A. <u>The Commission's Orders Prior to the Evidentiary Hearing...</u>	4
B. <u>The Examiner's Decision</u>	5
C. <u>The Commission's Report</u>	7
SUMMARY OF ARGUMENT.....	9
ARGUMENT.....	10
I. THIS CASE IS NOT RIPE FOR REVIEW.....	10
II. THE COMMISSION'S NARROW CONCLUSIONS ARE PROPER AND SUPPORTED BY THE RECORD.....	13
<u>Introduction</u>	13
A. The Commission's Authorization of a Rate Disparity Between Sea-Land and TMT Promoted Public Policy and Was Supported by the Record.....	14
B. The Commission Was Also Correct in Stating That Petitioner Could Not Lower Its Rates from Jacksonville Without Reducing Its Rates from Other Ports, Unless There Was A Proper Justification Shown.....	17
CONCLUSION.....	19

TABLE OF AUTHORITIES

<u>Cases</u>	<u>Pages</u>
* <u>Consolo v. Federal Maritime Commission</u> , 383 U.S. 607 (1966).....	15, 17
<u>Grays Harbor Pulp & Paper Co. v. A.F. Klaveness & Co.</u> , 2 U.S.M.C. 366 (1940).....	17
<u>Harbor Commission of the City of San Diego v. American Mail Line</u> , 1 U.S.M.C. 661 (1937).....	18
<u>Joint Anti-Facist Refugee Comm. v. McGrath</u> , 341 U.S. 123 (1951)...	10
* <u>Intercoastal Rate Structure</u> , 2 U.S.M.C. 285 (1940).....	15
* <u>Isbrandtsen Co. v. United States</u> , 93 U.S.App.D.C. 293, 211 F.2d 51 (D.C. Cir. 1954), <u>cert. denied</u> , 347 U.S. 990 (1954).....	10
<u>Reduced Rates on Machinery and Tractors from United States Atlantic Ports to Ports in Puerto Rico</u> , 9 F.M.C. 465 (1966).....	18
<u>United States Navigation Co. v. Cunard Steamship Co.</u> , 284 U.S. 474 (1932).....	15
 <u>Statutes</u>	
28 U.S.C. §2341, <u>et seq.</u>	1, 11
Intercoastal Shipping Act, 1933 §3; 46 U.S.C. §845.....	13, 14
Shipping Act, 1916, 46 U.S.C. §801, <u>et seq.</u>	
Preamble.....	14
§16, 46 U.S.C. §815.....	17
§18, 46 U.S.C. §817.....	14
 <u>Other Authorities Cited</u>	
Federal Maritime Commission Rules of Practice and Procedure	
Rule 10(o), 46 U.S.C. §502.155.....	12
Rule 10(p), 46 U.S.C. §502.156.....	16
3 Davis, Administrative Law §21.07.....	10
Jaffe, <u>Ripeness and Reviewable Orders in Administrative Law</u> , 61 Mich. L. Rev. 1273.....	11

* Cases principally relied upon.



COUNTERSTATEMENT OF THE CASE

Petitioner seeks review of a report of the Federal Maritime Commission (Commission) issued and served on May 9, 1967, and of the Commission's Order Denying Petition to Reopen and Reconsider served July 19, 1967. The report and order were entered pursuant to the Shipping Act, 1916, 39 Stat. 728, as amended, 46 U.S.C. §801 et seq. in the Commission's Docket No. 1182, Rates from Jacksonville, Florida to Puerto Rico. Jurisdiction to review the Commission's Order Denying Petition to Reopen and Reconsider is conferred on this court by 28 U.S.C. §2341 et seq. Respondents challenge the jurisdiction of this court to review the Commission's report.

I. BACKGROUND OF THE JACKSONVILLE RATE CONTROVERSY.

A. The Parties.

This proceeding began as an investigation of a rate reduction for the shipment of stoves from Jacksonville, Florida to Puerto Rico filed by Sea-Land Service, Inc., the petitioner here. The investigation was later broadened to include rate action by Sea-Land on other specific commodities and responsive rate action by TMT Trailer Ferry, Inc., the intervenor. In due course, Sea-Land and TMT having cancelled their rate reductions on the specific commodities (except as to one not here material), the Commission dismissed from the proceeding the issues concerning these rate actions. It directed, however, that the investigation continue into the broad questions of the lawfulness of (1) Sea-Land's proposal to charge different rates on commodities shipped from Jacksonville than it would charge for shipment of the same commodities from other Atlantic ports,

and (2) of TMT's right to charge lower rates from Jacksonville than those of Sea-Land. (J.A. 11).

TMT is a small common carrier (its entire sales force consists of six people), which operates locally between Florida ports and San Juan, Puerto Rico since 1954, using the roll-on/roll-off method of loading freight-carrying containers onto its vessels, i.e., highway trailers on their own wheels are driven and secured aboard the vessels. Its vessels, however, are not self-propelled. They are barges which must be towed to San Juan by chartered tugs (J.A. 15, 46).

TMT offers a twice-a-week schedule from Jacksonville, one which goes directly to San Juan and the other which stops at Miami en route. But because of the nature of its service--a tug and barge operation--its schedule is slow and not as reliable as Sea-Land's. Its direct run to San Juan takes about seven days and the one which makes a stop at Miami takes about nine days. There are also frequent delays in the schedule of from one to three days (J.A. 15, 47).

TMT's share of the Puerto Rico trade is only 5 percent (J.A. 19).

Sea-Land is a large carrier. Its sales organization consists of several hundred persons (whose functions are not restricted to the Puerto Rico trade) and it maintains offices in twelve major shipping areas (J.A. 18-19).

Unlike TMT, Sea-Land does not limit its service to the Puerto Rico trade, nor does it limit itself to Florida ports in serving the Puerto Rico trade. While it, too, operates between Jacksonville and San Juan, it also serves Puerto Rico from the North Atlantic ports of Elizabeth, New Jersey and Baltimore, Maryland and recently began a service from Charleston, South Carolina (J.A. 16, 46, n. 2).

The nature of its service is also different. It operates modern self-propelled vessels and these carry containers which are lifted by crane from the bed of a trailer onto the vessel.

Sea-Land's weekly service to San Juan from Jacksonville is direct and takes only three days (J.A. 16, 47).^{1/} Although a relative newcomer to the Jacksonville-Puerto Rico trade (direct service did not begin until 1963), Sea-Land has become the dominant carrier (J.A. 19, 49).

B. The Rates.

Sea-Land's rates on the commodities it now carries to Puerto Rico are the same from Jacksonville as they are from the Atlantic ports it serves, with a few exceptions,^{2/} and are also generally in line with rates assessed by other carriers serving Puerto Rico from North Atlantic ports. On the other hand TMT rates, which apply only to Florida ports, are generally lower than the prevailing rates to Puerto Rico from North Atlantic ports. (J.A. 16-17, 48-49).

The preponderance of cargo moved by Sea-Land through Jacksonville originates in areas which are rail-rate-favorable to Jacksonville, i.e., the inland rail

^{1/} Sea-Land also makes stops at Ponce, Arecibo and Mayaguez in Puerto Rico, the additional transit time beyond San Juan being another day or two (J.A. 16).

^{2/} The exceptions are stoves and ranges southbound, and rum, coconuts, pineapples, scrap and used metal northbound to Jacksonville. Sea-Land's Jacksonville rate on stoves, which precipitated the investigation, was cancelled by petitioner and therefore dismissed from further Commission scrutiny. (J.A. 12-13). The only specific northbound rate investigated was on scrap metal and the hearing examiner's conclusion that he could not find the rate unlawful on the record before him (J.A. 21) was not challenged either before the Commission or in the petition for review.

freight costs are lower to Jacksonville than to other ports. The commodities which it moves through Jacksonville and which account for most of its revenues at that port are paper and paper products, animal feed, food products, beer, sand and clay, iron and steel products, piece goods and refrigerator cargo of poultry, eggs, ice cream, fish, produce and frozen foods. Not all of TMT's rates on these commodities appear in the record; however, as to certain of them the TMT rates are either equal to or higher than Sea-Land rates (J.A. 17). and TMT derives insubstantial earnings from these. (J.A. 17, 48).

With respect to the commodities which account for the major share of TMT's revenues, its rates are lower than Sea-Land's and approximately 20 percent of its 1964 revenue came from areas rail-rate-favorable to North Atlantic ports, 37 percent from areas rail-rate-equal to North Atlantic ports and Jacksonville, and only 32 percent from the area rail-rate-favorable to Jacksonville. The balance of TMT's cargo originates in areas favorable to Miami or other ports. (J.A. 16-17, 48).

II. THE ADMINISTRATIVE PROCEEDINGS.

A. The Commission's Orders Prior to the Evidentiary Hearing.

On March 26, 1964, Sea-Land filed a rate reduction for the shipment of stoves from Jacksonville to San Juan. TMT protested the reduction and on May 8, 1964, the Commission instituted an investigation, FMC Docket No. 1182 (J.A. 1). At Sea-Land's urging, the Commission expanded its investigation on June 1, 1964 by its First Supplemental Order to consider a still lower rate on stoves filed by TMT and to consider whether or not TMT was "entitled to maintain a differential below the rate of Sea-Land because of TMT's slower barge service and any cost differences which may be inherent in TMT's barge operation." (J.A. 5).

The proceedings were further expanded on June 16, 1964 in the Second Supplemental Order which announced an investigation of Sea-Land's proposed increase in rates for refrigerated trailers. (J.A. 6). A Third Supplemental Order on September 30, 1964 expanded the investigation to cover a change in northbound rates for used and scrap metal ("scrap") filed by Sea-Land. (J.A. 9).

With the exception of Sea-Land's northbound rate on scrap, Sea-Land and TMT cancelled the specific rates under investigation, but the Commission directed that the investigation be kept open with respect to the scrap-metal rates. It also directed that the investigation continue into "the questions of the lawfulness of the difference in rates on the same commodities between Jacksonville, Florida and Puerto Rico and other Atlantic Ports and Puerto Rico, and of the differential with respect to the rates of TMT below those of Sea-Land." (J.A. 12).

Thus, upon issuance of the order of October 16, 1964, the only specific commodity-rate under investigation was Sea-Land's northbound scrap rate. TMT does not carry scrap northbound. (J.A. 19, 50).

On February 19, 1965, the Commission denied TMT's petition to again broaden the investigation to include all carriers in the trade between Gulf and Atlantic ports and Puerto Rico and to include two other issues as well, reasoning that to expand the proceeding "would have the effect of bringing into the investigation new issues" not related to its "specific purpose of examining the competitive relationship between Sea-Land . . . and TMT."

B. The Examiners Decision.

After an evidentiary hearing, Hearing Examiner Greer issued his initial decision on August 16, 1966. (J.A. 14 et seq.). He upheld Sea-Land's northbound

rate on scrap, even though its scrap rate to Jacksonville was lower than to North Atlantic ports, reasoning that a rate difference to different destinations is not per se unlawful and no evidence had been adduced to show the rate unlawful. (J.A. 21).

With respect to the general questions posed by the Commission's order, he made the following findings: The predominant factor influencing the shipper's choice of carrier or port is the total cost from origin to destination. The shipper's decision is also influenced, although to a lesser extent, by other factors, including the time in transit, regularity of service, safety and carrier service. (J.A. 17-18). In establishing rates, TMT's principal consideration is the necessity to maintain a differential under the prevailing rates in order to compensate for its inferior service (J.A. 18) and that if TMT did not charge lower rates than Sea-Land, it would lose all its cargo originating in areas rate-favorable to North Atlantic ports (about 20 percent of its 1964 principal commodities) and substantial amounts of cargo from areas equal to Jacksonville and other ports served by Sea-Land. (J.A. 19-20). He further found that both are now operating at a profit but that at rate parity, TMT's ability to compete would be seriously crippled and that elimination of TMT from the Jacksonville - Puerto Rico trade would leave Sea-Land in virtual control of that trade. (J.A. 19, 20). The examiner found that the cost data in the record is such that it cannot be determined as between Sea-Land and TMT which is the low cost operator. (J.A. 19).

The examiner concluded that on the record before him there was "no competitive necessity or other transportation conditions justifying rate parity" (J.A. 44). Nor was there evidence in the record "to support a finding of

competitive necessity or other transportation conditions to justify a Sea-Land rate difference between the various United States Atlantic ports it serves and Puerto Rico." (J.A. 25).

C. The Commission's Report.

No exceptions were taken to the examiner's holding as to the north-bound scrap rate and so this holding was left undisturbed. (J.A. 61). Exceptions, however, were taken by Sea-Land to the examiner's findings bearing on the abstract questions remaining in the investigation. In its report of May 9, 1967, (J.A. 45 et seq.), the Commission considered these questions and ruled that TMT may fix rates differentially lower than Sea-Land (J.A. 54-56), reasoning that TMT's service is slower and less dependable and the lower rates are, therefore, necessary to remain competitive and to survive. The Commission also upheld the validity of TMT's rates from Jacksonville, even though they were lower than the rates prevailing from North Atlantic ports. It rejected the assertion that they unduly prefer Jacksonville and prejudice other ports in violation of section 16, First, of the Shipping Act. TMT does not serve North Atlantic ports and the Commission found that to sustain Sea-Land's charge, it is not enough to show merely that the lower rates attract cargo from origins which have higher inland rail freight costs to Jacksonville than to the other ports, especially where the consequences of uniform rates "would have a disastrous impact on TMT." (J.A. 59).

With respect to Sea-Land's general desire to lower its rates from Jacksonville below those charged at other Atlantic ports, the Commission said that such a rate scheme would be prejudicial on its face and the only justification advanced by

Sea-Land--competitive necessity--would be unavailing on the record before it. (J.A. 65). Sea-Land had been able to meet this competition without reducing its rates below those from the North Atlantic ports because its service from Jacksonville is faster and more reliable than TMT's. The Commission noted that Sea-Land had been able to operate profitably from Jacksonville and to attract cargo even from origins which have the same inland freight cost to the North Atlantic ports as to Jacksonville. (J.A. 64-65). A lowering of rates from Jacksonville would probably (a) divert cargo from the other ports and (b) have the effect of seriously crippling TMT's ability to attract cargo and leave Sea-Land with "virtual control for itself of the trade between Jacksonville and Puerto Rico." (J.A. 65, 66). The Commission, therefore, concluded that, on the record before it, Sea-Land would not be justified in charging lower rates from Jacksonville than from the North Atlantic ports it serves. The Commission, however, recognized that different considerations might apply had Sea-Land sought to justify a difference on the basis of distance, cost or other transportation conditions. (J.A. 64).

On July 19, 1967, the Commission issued an Order Denying Petition to Reopen and Reconsider. (J.A. 70). It refused to reopen because it viewed the proceeding as only presenting "the question of differentials generally" and that "its Report is largely declaratory of the general considerations involved."

A petition for review of the Commission's decision was filed in this Court on August 9, 1967. TMT was allowed to intervene on September 26, 1967. (J.A. 78). Intervenors' Motion to Dismiss was denied without oral argument on November 3, 1967, without prejudice to renew it in the briefs and during argument on the merits. (J.A. 79).

SUMMARY OF ARGUMENT

There is no Commission action which has the necessary finality for review at this time. The Commission entered no order because it had no specific Sea-Land rate before it, and until the Commission actually disapproves a rate, petitioner can show no impact on it.

Sea-Land is in no way foreclosed from litigating the issues argued here in a future proceeding dealing with a concrete Sea-Land rate. Nor does the Commission report subject Sea-Land to any new burdens in carrying out its rate action. The report is little more than a general expression of the Commission's view of the present competitive relationship between Sea-Land and TMT in the Jacksonville trade.

Assuming, arguendo, that there is a reviewable Commission action, the Commission's conclusions were correct. TMT's service is inferior to Sea-Land's and without a rate differential the already bankrupt TMT would be eliminated as a competitor in the Jacksonville trade. The Commission decided that the trade could best be served by preserving TMT as a competitor unless Sea-Land could show a competitive necessity for eliminating the differential. But Sea-Land is already the dominant carrier in the trade and because of its superior service is highly competitive even though it charges higher rates than TMT on certain commodities.

The Commission logically held that a policy of charging different rates from different competitive ports on the same commodities is preferential and prejudicial on its face as between the ports. It therefore correctly found that since Sea-Land had failed to show competitive necessity, or cost or other transportation justification, such a rate policy should not be approved.

^{3/}
ARGUMENT

I. THIS CASE IS NOT RIPE FOR REVIEW.

No rate action was before the Commission when the Commission expressed its general observations as to the circumstances which might justify Sea-Land in lowering its rates at Jacksonville. The Commission did not have before it a lower rate from Jacksonville which Sea-Land had put into effect. In these circumstances, we submit that the Commission's general observations do not have the requisite finality for review at this time.

The Commission's report will have an impact on petitioner "only if some further action is taken by the Commission." Joint Anti-Fascist Refugee Comm. v. McGrath, 341 U.S. 123, 155 (1951) (Frankfurter, concurring). "The true test [of ripeness] is the substantiality of present or imminent harm which the administrative action inflicts on the plaintiff." 3 Davis, Administrative Law §21.07, p. 176-77 (1958) (footnote omitted). Indeed, in a case involving the Federal Maritime Board, a predecessor agency of the Commission, this court recognized that finality depends "upon a realistic appraisal of the consequences of such action" and the test is the "irreparable injury threatened in the exceptional case by administrative rulings which attach legal consequences to action taken in advance of other hearings and adjudications that may follow." Isbrandtsen Co. v. United States, 93 U.S.App.D.C. 293, 211 F.2d 51, 55 (D.C. Cir. 1954), cert. denied, 347 U.S. 990 (1954).

^{3/} The United States joins with the Commission in urging the court to dismiss the petition for lack of jurisdiction (Point I). The United States takes no position, however, as to Point II on which the Commission relies in this brief as a ground for affirmance.

Only "final orders" of the Commission may be reviewed in this court. 28 U.S.C. §2342. "But a statute which provides for review of an 'order' following a stated course of procedure will preclude the statutory review of the action qua 'order' where the stated administrative process has not been completed or is not a prelude to the action in question." Jaffe, Ripeness and Reviewable Orders in Administrative Law, 61 Mich. L. Rev., 1273, 1298 (1963). Until Sea-Land files rates which are actually disapproved by the Commission, it can claim no harm which this court should remedy.

None of Sea-Land's rates were affected in any way by the Commission report and the only final order directed at petitioner was the Commission's order denying its motion to reopen and reconsider. Sea-Land is not foreclosed from filing lower rates.

Moreover, a dismissal by this court will not prevent petitioner from litigating the issues raised here if and when the Commission disapproves a Sea-Land rate change in the trade. Disapproval of a future Sea-Land rate reduction to parity with TMT must be based on a Commission finding that Sea-Land has failed to show a competitive necessity or other justification for the reduction. Implicit in a Commission determination that a Sea-Land reduction to parity is not competitively necessary is a finding that at parity, TMT could no longer compete. Because the Commission considered only generally the Sea-Land - TMT competitive relationship it simply cannot use its report in this case to prevent Sea-Land from later showing a different competitive relationship. That issue will only be sharply defined for this court after some future hearing on a specific Sea-Land rate change.

Similarly, if in the future Sea-Land should publish rates from Jacksonville below those from other ports, petitioner will in no way be prejudiced by a dismissal now. In order to disapprove such a rate policy, the Commission would still have to find that petitioner had shown no adequate justification for the obvious preference in favor of Jacksonville and prejudice to other ports.

The Commission's report is little more than an explanation by the Commission of its view of the present competitive relationship between Sea-Land and TMT and a declaration that given a similar relationship at the time Sea-Land seeks either to reduce its Jacksonville rates to TMT parity, or below Sea-Land's rates from other ports, petitioner will be obliged to present satisfactory justification for its rates.

The requirement that Sea-Land justify its rates imposes no new burden on petitioner. Section 3 of the Intercoastal Shipping Act, 46 U.S.C. §845 permits the Commission to suspend Sea-Land's rates to Puerto Rico for up to four months, and Rule 10(o) of the Commission's Rules of Practice and Procedure, 46 C.F.R. §502.155 squarely places the burden of justifying the suspended rates on the carrier.

The Commission made clear the non-adjudicatory nature of its holdings in its order denying Sea-Land's motion to reopen the proceedings (J.A. 70) when it said:

"The Commission has decided that it will not reopen the record as requested by Sea-Land. In this proceeding the Commission considered the question of differentials generally; its Report is largely declaratory of the general considerations involved, including burden of proof, the type of evidence needed, and the general policy that the Commission will follow in such a case. . . . Furthermore, no order

was issued against Sea-Land. It has not been required to modify its rate structure." (J.A. 72-73). (Emphasis supplied). 4/

Petitioner argues (Answer to Motion to Dismiss, p. 3) that the Commission's general comments increase the likelihood that, should Sea-Land actually publish lower rates, the Commission will suspend them and that this is a sufficient impact to warrant review at this time. In the first place, it is extremely unlikely that the Commission's comments will have any bearing on the question of whether or not to suspend. For the Commission in the exercise of its discretionary power 5/ routinely suspends rate changes which are protested before their effective date. In any event, even if the Commission's general comments increased the likelihood of a suspension were Sea-Land actually to publish lower rates, the impact on Sea-Land resulting from the suspension (the statutory maximum is four months, 46 U.S.C. §845) would not be sufficiently substantial to establish the existence of a controversy ripe for review, especially when weighed against the desirability of deferring a review until the issue is presented in a factually sharpened context.

II. THE COMMISSION'S NARROW CONCLUSIONS ARE PROPER AND SUPPORTED BY THE RECORD.

Introduction.

Assuming, arguendo, that the Commission's report was more than a general

4/ Sea-Land sought to introduce evidence as to the competitive impact in the Florida-Puerto Rican trade of South Atlantic and Caribbean Line, Inc. (SACL), which competes at rate parity with TMT. (J.A. 59 , fn. 13). Since the report was not viewed as an order directed at Sea-Land, and the investigation was concerned with the effect on TMT of lower rates of the predominant Sea-Land, the Commission correctly said that its "interpretation of the applicable law . . . would not be modified by the evidence Sea-Land would adduce." (J.A. 73).

5/ Intercoastal Shipping Act, 1933, §3; 46 U.S.C. §845.

expression of the agency's view of the Sea-Land - TMT competitive relationship and somehow had an immediate impact on petitioner, nevertheless, the conclusions challenged here were correct.

The Commission found that (1) without a showing of a competitive necessity, Sea-Land could not reduce its rates in the trade to parity with TMT's because elimination of the rate differential would force TMT out of business, and (2) without a similar factual showing Sea-Land could not charge a lower rate from Jacksonville than from other Atlantic ports since a port rate differential is preferential and prejudicial on its face. Both findings reflect the Commission's statutory obligation to insure that rates are reasonable.^{6/}

A. The Commission's Authorization of a Rate Disparity Between Sea-Land and TMT Promoted Public Policy and Was Supported by the Record.

The Commission's finding that TMT should be allowed a rate differential because of its inability to compete with Sea-Land at parity is consonant with the Shipping Act purpose of "encouraging, developing, and creating . . . a merchant marine to meet the requirements of the commerce of the United States."^{7/} The Commission found that "elimination of the differential would result in TMT's inability to remain competitive, thus leaving to Sea-Land the virtual control of the trade between Jacksonville and Puerto Rico." (J.A. 60).

Petitioner misconceives the definition of the competition which the Commission seeks to preserve. For the Commission is not concerned with Sea-Land's unqualified right to obtain those items of cargo which TMT's lower rates keep out of its reach. Rather the Commission's goal is to regulate rates so as to enhance

^{6/} Shipping Act, 1916, §18, 46 U.S.C. §817; Intercoastal Shipping Act, 1933, §3, 46 U.S.C. §845.

^{7/} Preamble to Shipping Act, 1916.

the commerce of the United States. The Commission determined that "the Puerto Rican trade is best regulated and coordinated by the preservation of TMT's service." (J.A. 60) (footnote omitted). Sea-Land is already the dominant carrier in Jacksonville - Puerto Rico trade and TMT has but five percent of the market. (J.A. 19). As the Commission noted in approving the philosophy expressed in an earlier decision which discussed rate differentials:

" . . . the record points clearly to the almost inevitable result of a one rate level - a gradual mastery of the trade by carriers furnishing the better service. We should not ignore the fundamental fact that shippers will pay only in proportion to the value of the service rendered. In recognition of this principle the carriers have always found it necessary to establish differentials in order to bring about a fair distribution of intercoastal traffic. When these differentials have been narrowed or abolished, the traffic has invariably gravitated to the better equipped lines. The question posed therefore is whether a merchant marine is best promoted and encouraged by a few strong lines with a monopoly of the traffic, or a larger number offering a variety of services at rates based on the value and cost of such services." Intercoastal Rate Structure, 2 U.S.M.C. 285, 311 (1940).

The Commission's policy decision as to how best to enhance competition is informed by its expert assessment of the maritime industry and its evaluation should be accorded great weight. United States Navigation Co. v. Cunard Steamship Co., 284 U.S. 474, 485 (1932); Consolo v. Federal Maritime Commission, 383 U.S. 607, 620-21 (1966).

Both the Commission and the hearing examiner found that Sea-Land rates at parity with TMT's rates would eliminate TMT as a competitor (J.A. 60, 20, 27). and the finding is adequately supported by the record. The Commission and examiner noted that at equal rates such things as the length of transit time, exposure of cargo to the sea and stability of service play a major role. (J.A. 54, 26). They also found that TMT's service was inferior to Sea-Land's

(J.A. 54-55, 24-27). "Because of the nature of the tug and barge operation, TMT experiences difficulty in keeping on schedule, there being variations of from one to three days." (J.A. 15). Moreover, scheduled transit time for TMT voyages to San Juan varies from approximately seven to nine days (J.A. 47, 15) while Sea-Land's transit time is only three. (J.A. 47, 16). The fact that TMT schedules more frequent sailings than Sea-Land does not eliminate TMT's service disability "(b)ecause TMT's service is quite erratic." (J.A. 55).

The examiner and Commission concluded that "shippers would as a rule prefer the more modern, faster, and more dependable service of Sea-Land if rates were equal." (J.A. 26-27, 55). It does not even require the Commission's "general knowledge of the subject derived over the years" (J.A. 55 , fn. 8) ^{8/} to foresee the inevitable result of competition at parity.

TMT's right to a rate differential also rests on Sea-Land's failure to show a competitive necessity for lowering its rates to parity. But "(c)ompetitive necessity should be approached from the standpoint that a carrier finds itself unable to compete, and not on its ability to deprive a competitor of cargo" (J.A. 64), and the Commission found that Sea-Land had no such competitive necessity for lowering its rates. On the contrary, Sea-Land's Jacksonville operation was found to be "profitable and its continuance in the trade is not threatened." (J.A. 56).

^{8/} Petitioner argues that the examiner improperly excluded letters from shippers which would have shown the real competitive effect of the rate differential. (Pet. br. 12-13). However, the examiner concluded that the letters as cumulative pursuant to FMC Rule of Practice and Procedure 10(p), 46 C.F.R. §502.156.

The Commission also indicated that Sea-Land could have eliminated the differential by a showing that it was the low cost carrier in the trade. However the Commission said "we cannot decide this issue on the bases of cost data in this record." (J.A. 57).

There was substantial evidence in the record to support the Commission's finding that TMT would go out of business at parity with Sea-Land especially since TMT is already in bankruptcy. The Commission also considered and rejected for lack of proof petitioner's competitive necessity and cost arguments, two issues which are clearly within the agency's expertise to decide. This court may not substitute its view of the facts for the Commission's. Consolo v. Federal Maritime Commission, supra at 618-20.

B. The Commission Was Also Correct in Stating That Petitioner Could Not Lower Its Rates from Jacksonville Without Reducing Its Rates from Other Ports, Unless There Was A Proper Justification Shown.

9/

Section 16 of the Act makes it "unlawful for any common carrier . . . (t)o make or give any undue or unreasonable preference or advantage to any . . . locality . . . or to subject any . . . locality . . . to any undue or unreasonable prejudice or disadvantage." A Sea-Land rate policy which would grant a lower rate at Jacksonville than at other ports "on its face works a preference to Jacksonville and prejudice to other Atlantic ports served by Sea-Land." (J.A. 63). A disparity in rates between ports can only be justified where "circumstances and conditions surrounding shipments from the different ports are 'substantially different'." Grays Harbor Pulp & Paper Co. v. A.F. Klaveness & Co., 2 U.S.M.C. 366, 369 (1940); see also

9/ 46 U.S.C. §815.

Harbor Commission of the City of San Diego v. American Mail Line, 1 U.S.M.C. 661, 668 (1937). If petitioner files different rates from Jacksonville, "(t)he burden of showing these circumstances is upon Sea-Land, the carrier applying to change its rates." (J.A. 63). Intercoastal Shipping Act, 1933, §3, 46 U.S.C. §845; Reduced Rates on Machinery and Tractors from United States Atlantic Ports to Ports in Puerto Rico, 9 F.M.C. 465, 477 (1966).

The Commission made clear that Sea-Land simply did not justify such a rate policy.

"Had Sea-Land adduced evidence of the difference in cost of operation between North Atlantic ports and Puerto Rico as compared to cost of operation between Jacksonville and Puerto Rico, it might have been determined that a rate difference was justified on the basis of costs of the respective services." (J.A. 64).

Since Sea-Land also failed to show a competitive necessity for differentially lower rates from Jacksonville, i.e., its inability to compete, and not its ability to take a greater share of TMT's cargo, the Commission concluded that the proposed rate policy would have two deleterious effects. The lower Jacksonville rate would "seriously impair TMT's ability to attract cargo" and at the same time injure northern ports by inducing "the movement of cargo from Sea-Land's service at North Atlantic ports to its service at Jacksonville." (J.A. 65). The Commission therefore properly declared that such an unjustified rate policy would be disapproved.

CONCLUSION

For the foregoing reasons, the petition should be dismissed or in the alternative, the Commission's Order Denying Petitioner's Motion to Reopen and Reconsider should be affirmed.

Respectfully submitted,

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Washington, D.C.
December 15, 1967

Federal Maritime Commission

REPLY BRIEF OF PETITIONER
SEA-LAND SERVICE, INC.

In the
UNITED STATES COURT OF APPEALS
For the District of Columbia Circuit

NO. 21217

SEA-LAND SERVICE, INC.,
Petitioner.

v.

FEDERAL MARITIME COMMISSION
and
UNITED STATES OF AMERICA.
Respondents.

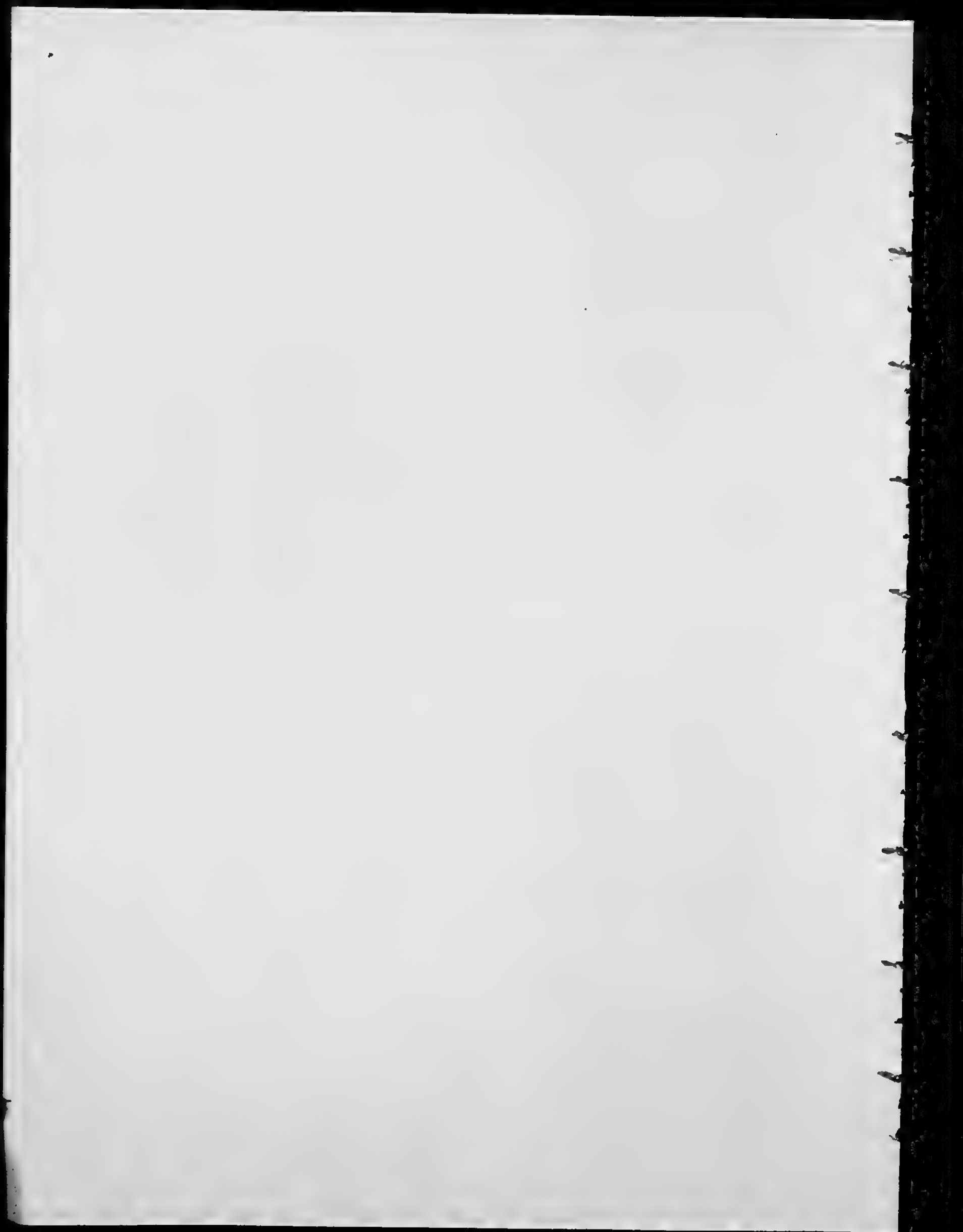
PETITION FOR REVIEW OF DECISION BY THE
FEDERAL MARITIME COMMISSION

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SUBJECT INDEX

ARGUMENT:

I.	The Case Is Ripe for Review.....	1
II.	There Is No Merit to the Arguments Supporting the Commission's Action in Forbidding Sea-Land To Meet the TMT Rates ...	6
III.	The Argument of the Commission and TMT Respecting the Section 16, First, Findings of the Commission Are Invalid.	12

TABLE OF CASES

*Ayrshire Collieries Corp. v. U.S., 335 U.S. 573 (1949).....	13
Capital Transit Co. v. P.U.C., 213 F.2d 176 (1954), 93 App. D.C. 194.	9
Carolina Aluminum Company v. F.P.C., 97 F.2d 435.	3
Chesapeake & O. R. Co. v. U.S., 283 U.S. 35 (1931).	10
City of Portland v. Westbound Conference, 4 FMB 664 (1955)	14
*I.C.C. v. Ala. Midland Ry., 168 U.S. 144 (1897)	15
*Isbrandtsen Co. v. U.S., 93 App. D.C. 293, 211 F.2d 51-55 (1954)	4
National Council, etc. v. Subversive Activities Control Bd., 116 App. D.C. 162, 322 F.2d 375 (1963).	10
*New York v. U.S., 331 U.S. 284 (1947)	12
Northeast Airlines, Inc. v. CAB, 345 F.2d 662 (1965)	3
Pacific Far East Line v. U.S., 101 App. D.C. 24, 246 F.2d 711 (1957).	14
Santa Fe Trail States, Com. Car. Application, 21 M.C.C. 725 (1940)	10
Sea-Land Service, Inc. v. South Atlantic & Caribbean Line, Inc., 9 F.M.C. 338.	14
Securities Comm. v. Chenery Corp., 318 U.S. 80	10
Shannahan v. United States, 303 U.S. 596, 58 S. Ct. 732, 82 L.Ed. 1039 (1938).	3
TMT Trailer Ferry, Inc. (C. Gordon Anderson, Trustee) v. Federal Maritime Commission and United States of America (1966) C.A. 20206	5
*Toilet Goods Association v. Gardner, 360 F.2d 677 (1966).	3
*United States v. Chi., M & St. P. & P. Ry., 294 U.S. 499	11

(ii)

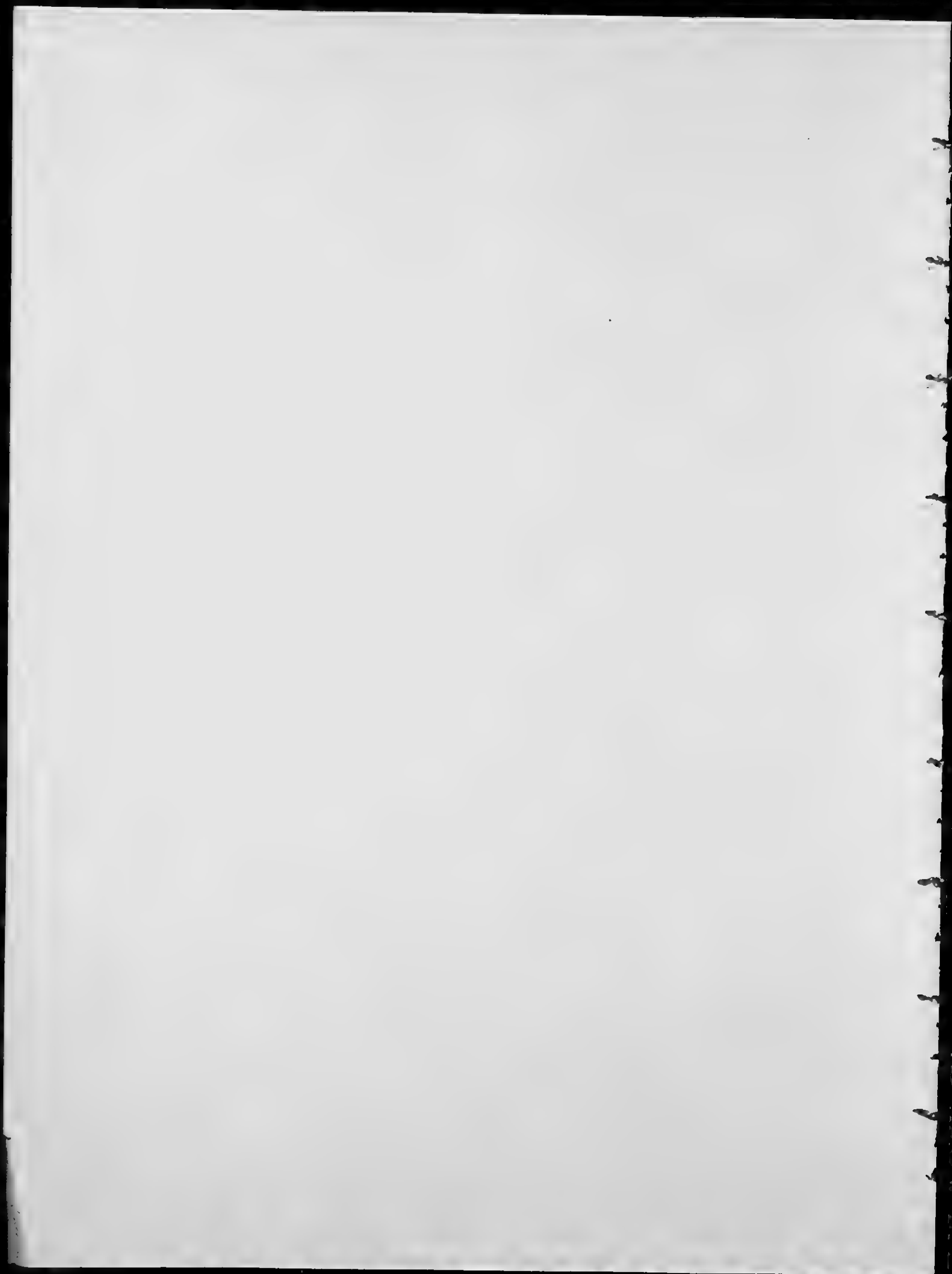
United States v. Los Angeles & Salt Lake R.R., 273 U.S. 299, 47 S.Ct. 413, 71 L. Ed. 651 (1927).....	3
---	---

STATUTES

Shipping Act, 1916 (46 U.S.C. 801).....	11, 15
Merchant Marine Act, 1920 (46 U.S.C. 867).....	13
Merchant Marine Act, 1936 (46 U.S.C. 1101).....	11

*Cases chiefly relied on are marked by an asterisk.





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PETITION FOR REVIEW OF DECISION BY THE
FEDERAL MARITIME COMMISSION

REPLY BRIEF OF PETITIONER
SEA-LAND SERVICE, INC.

ARGUMENT

I

The Case Is Ripe for Review

The Respondents and Intervenor TMT renew their contention that the Commission's Report below is not ripe for review insofar as it concerns Sea-Land's rates and practices. Their argument is that

the report below does not by its terms require Sea-Land to do or refrain from doing anything; that Sea-Land should wait until some specific rate is enjoined by the Commission in line with its report hereinbelow and then seek a reversal in the Courts. There is no merit to this contention.

The Commission entered four orders of investigation in this proceeding, affirming and reaffirming the purpose of determining:

[a] The right of Sea-Land to meet the rates of its competitor TMT from Jacksonville, Fla. to Puerto Rico, and

[b] The right of Sea-Land to reduce its rates from Jacksonville without equivalent reductions from the Atlantic ports to the north. (See Commission's Denial in Part of Motion To Dismiss, (JA 11)).

After extensive hearings, briefings, an Examiner's initial decision, exceptions, replies and oral argument, the Commission issued the report here in issue finding that Sea-Land did not have the right to meet the TMT rates nor to assess lower rates from Jacksonville than from the ports to the north. Except for a rate on scrap iron (not here in issue) no specific Sea-Land rates were involved in the proceeding. Rather *the entire Sea-Land rate structure and its practices in connection therewith through Jacksonville were in issue*. Because specific rates were not involved, it was obviously neither appropriate nor necessary that the Commission order Sea-Land to publish or to cancel any particular rates. Nevertheless a definitive decision was made with respect to *all* of Sea-Land's Jacksonville rates; i.e. that they cannot be reduced to the TMT level and that in any event they cannot be reduced below the North Atlantic ports level.

To now contend, as do Respondents and Intervenor TMT, that because the publication of one or more specific rates was not enjoined the Commission Report did not accomplish anything concrete, is to ignore the realities — to consider only the form and not the substance of the Commission action. To conclude that the Com-

mission has itself expended, and caused to be expended by the parties, the enormous amount of time and effort involved in this proceeding for no purpose other than to lay down general "guidelines", having no real force or effect, is to imply a serious misdirection of the regulatory function.

Intervenor TMT relies heavily (at pp. 10, 11) on a 1938 decision by the Court of Appeals in the Fourth Circuit in *Carolina Aluminum Company v. F.P.C.*, 97 F.2d 435, to support its contentions in the premises. We submit that later decisions are more apposite. As the Court said in *Toilet Goods Association v. Gardner*, 360 F.2d 677 (1966) (Aff. 387 U.S. 767):

"With respect to the other relevant consideration, the degree of hardship warranting the declaratory relief, although some older precedents suggest broadly that an administrative ruling is not reviewable until and unless it imposes an obligation or subjects the plaintiff to some civil or criminal liability. See, e.g., *United States v. Los Angeles & Salt Lake R.R.*, 273 U.S. 299, 309-310, 47 S.Ct. 413, 71 L.Ed. 651 (1927); *Shannahan v. United States*, 303 U.S. 596, 599, 58 S.Ct. 732, 82 L.Ed. 1039 (1938), *there has been a growing recognition that the timeliness of review depends on a broader concept of the substantiality of present or imminent harm.* See 3 Davis, *Administrative Law Treatise* § 2107 (1958). (emphasis added).

Earlier in the same decision, the Court said:

"The appropriateness of passing judgment on the validity of an administrative regulation prior to its application to particular facts depends on such factors as *how far the rule represents the definitive position of the agency* and the extent to which the challenge raises a clearcut legal issue susceptible of judicial solution without reference to fact variables arising in its implementation. Cf. *North-east Airlines, Inc. v. CAB*, 345 F.2d 662, 664 (1 Cir.

1965). *Review might be considered premature where an agency rule had not received substantially as full consideration in its formulation as it would have in subsequent application, or where future experience would be likely to result in significant modifications as to its precision or scope.* (p. 684, 685) (emphasis added).

The U.S. Supreme Court said in affirming this decision:

“We agree with the District Court and the Court of Appeals that this is not a situation in which consideration of the underlying legal issues would necessarily be facilitated if they were raised in the context of a specific attempt to enforce the regulations”. (387 U.S. 767)

We have the same situation here. There are no “fact variables” with respect to Sea-Land — TMT competitive efforts that would affect the future implementation of the findings and conclusions of the Commission below. It has flatly ruled that Sea-Land may not equalize the TMT rates. There is no area for compromise or modification in the Commission’s findings; that is, no particular factual situation with respect to any particular rate could change the Commission’s findings as to that rate. There is in the Commission’s Report not the slightest intimation that the hard and fast rule that it has laid down is subject to modification in individual circumstances. The findings and conclusions are all-embrasive, and under no circumstances revealed or implied in the report could any future Sea-Land rate publication not be covered thereby.

As this Court said in *Isbrandtsen Co. v. U.S.*, 93 App. D.C. 293, 211 F.2d 51-55 (1954) (Cert. den. 347 U.S. 99), agency actions are reviewable that “impose an obligation, deny a right, or fix some legal relationship as a consummation of the administrative process.” The action of the Commission below clearly falls within this category.

The situation here is entirely dissimilar to that in C.A. 20206

TMT Trailer Ferry, Inc. (C. Gordon Anderson, Trustee) v. Federal Maritime Commission and United States of America (1966), referred to by TMT (p. 8). There an order of the Commission had been vacated by the Commission following a remand from this Court, and no further order was issued. There being nothing before the Court, the matter was dismissed as moot. It was not the fact there, as here, that action of the Commission served to "impose an obligation, deny a right, or fix some legal relationship as a consummation of the administrative process."

The contention of TMT (p. 9) that Sea-Land has no standing to seek review because it has been denied no right that it sought by petition or complaint is without merit. That is the same as saying that parties to proceedings instituted on the Commission's own motion have less standing before the courts than parties formally instituting the proceedings. This, of course, is not the case.

The Commission and the United States brief states that "Sea-Land is not foreclosed from filing lower rates" (p. 11). It states that "it is extremely unlikely that the Commission's comments (in the report below) will have any bearing on the question of whether or not to suspend" (p. 13) that the Commission "routinely suspends rate changes which are protested before their effective date". (ibid).

As Sea-Land pointed out (at p. 3) in its Answer to Motion to Dismiss the Petition, filed previously herein, the only rate action by Sea-Land since the report below was issued that went counter to the findings of that report has been suspended, *without protest from any party*. [Docket 67-35 *Sea-Land Service, Inc. Investigation of Reduced Rates*]. Obviously, the rate there involved, objectionable to no one, was suspended only because it did not conform to the conclusions in the report below.

The Government brief goes on to say that even if the report below does increase the likelihood that future Sea-Land rates will be sus-

pended, the impact on Sea-Land from a Maximum four-month suspension would not be "sufficiently substantial to establish the existence of a controversy ripe for review * * *" (p. 13). This statement manifests either a misunderstanding or a callous disregard for the realities of steamship operations. During the four months that a Sea-Land rate, published for the purpose of sharing in a given item of traffic with TMT, is held under suspension, Sea-Land would lose revenue. Nothing that the Commission does later can ever recover that lost revenue. Certainly, the report below, being the basis for the suspension of any future Sea-Land rates that seek to equalize TMT's rates, subjects Sea-Land to immediate and irreparable injury. Until it is reversed, Sea-Land's ability to compete, and its revenue position, are seriously prejudiced.

The action of the Commission below is clearly ripe for judicial review.

II

There Is No Merit to the Arguments Supporting the Commission's Action in Forbidding Sea-Land To Meet the TMT Rates

TMT argues that because Sea-Land transports a significant volume of traffic to Puerto Rico, compared with TMT, the contention that it cannot compete with TMT at higher rates is "ludicrous." It purports to compare the traffic of the two carriers (at page 24) to bolster its argument.

The comparative tonnages shown on page 24 are highly misleading. The Sea-Land tonnages there contained are not only those moved between Florida and Puerto Rico, but between *all* the Atlantic ports that it serves (i.e. New York, Baltimore, and Jacksonville) and Puerto Rico (See Ex. JA 17; 173). The great majority of Sea-Land's Puerto Rican traffic moves from or to New York and Balti-

more — in some part due to the fact that its rates from Jacksonville are generally higher than those of TMT. On the following page is a restatement of the tonnage statistics on page 24 of the TMT brief, taken from the same source exhibits, showing Sea-Land's Puerto Rican revenue only through Jacksonville, as well as through all Atlantic ports:

1964 Revenues of Sea-Land and TMT
on Traffic Moving to Puerto Rico

	Sea-Land (Total)	Sea-Land thru Jacksonville	TMT
Machinery	\$ 273,838	\$ 10,543	\$ 183,100
Refrigerators	163,245	6,163	404,000
Furniture	418,223	9,994	430,000
Stoves	97,907	25,199	202,000
Household Goods	285,623	14,941	88,000
Laundry Equipment	40,338	0	190,000
Electrical Equipment	642,418	14,847	158,000
Food Products	823,839	60,588	113,200
Autos Freight	612,489	5,445	54,500
Vehicles Other Than Motor	4,972	28	55,000
Building Materials	55,370	92	45,800
Drugs	125,200	690	25,100
Manufactured Iron and Steel	617,251	9,412	122,500
Containers	109,658	682	1,000
Dry Goods	648,741	51,371	17,100
Cotton Piece Goods	319,010	14,172	800
Poultry	551,865	318,026	0
Meat	520,744	7,927	0
Feed	364,142	27,196	?
Bottles	338,700	17,000	2,000
Cigarettes	331,642	0	0
Paper — Cleansing	330,325	5,999	0
Paper — Boxes	232,904	8,183	14,600

Paper — Wrapping	63,237	43,460	0
LTL — \$10	320,323	0	*
Potatoes	285,653	1,175	0
Cargo, N.O.S.	276,635	609	66,500
Tobacco Leaf	217,201	27,089	4,900
Eggs in Shell	233,440	69,279	See Refrig. NO
Detergent, Soap	378,169	2,236	10,000
Sandals, Shoes	277,763	1,128	0
Tin Cans, SU & KD	288,466	7,090	600
Plumbing Materials	259,913	0	17,100
Synthetic Yarn	179,646	13,065	16,200
Paint, NOS	168,427	10,025	24,000
Freight, All Kinds	1,839,158	14,192	0
Refrigerated, N.O.S.	166,692	10,145	8,700
Ice Cream	111,000	111,000	See Refrig. NO
Produce	297,949	103,665	0
Catalyst	117,108	45,021	0

* Note: TMT revenue from LTL reflected in general figures.

It must be borne in mind in reviewing these relative revenues that the tonnage capacity of Sea-Land's vessels is substantially greater than the capacity of the TMT vessels. The relatively minor participation by Sea-Land in the high rated, and thus desirable, traffic items, such as refrigerators, furniture, etc. is readily apparent from this tabulation.

The brief of the Government states:

"TMT's share of the Puerto Rico trade is only 5 percent" (p. 2) and

"Sea-Land is already the dominant carrier in Jacksonville-Puerto Rico trade and TMT has but five percent of the market" (p. 15)

These statements, presumably taken from the Examiner's initial decision (JA 19, 40) are, as we pointed out in our exceptions, to say the least, misleading. Exhibit 37, prepared by the Commission staff, (JA 230) shows total tonnages moving to and from Puerto Rico from

and to all United States ports. The 5% figure used by the Commission presumably refers to the proportion that TMT's traffic is of the *total* traffic to and from Puerto Rico, i.e., from and to North Atlantic, South Atlantic, Gulf of Mexico and Pacific coast ports. Exs. 1 and 37 (JA 131, 230) show that TMT's 1964 revenue was about 66% of all revenue between Puerto Rico and South Atlantic ports in the last year shown on Ex. 37, 1963. The 5% figure is therefore misleading and meaningless.

At all events, the question here is not how much traffic Sea-Land or TMT are currently attracting to Puerto Rico. The question is rather whether Sea-Land's service from Jacksonville will be allowed to compete with that of TMT (and South Atlantic Caribbean Lines) at equal rates; whether for example, instead of "0" revenue from Laundry Equipment (see previous tabulation) Sea-Land can share in some of the \$190,000 in revenue realized from this item by TMT in 1964. We submit that Sea-Land, or any carrier, has the right to compete for any item of traffic that it holds itself out to ship for the public — irrespective of the volume of its other traffic, from the same or other ports.

On the question of whether or not TMT actually needs a differential in order to compete with Sea-Land, TMT argues that in the final analysis, "the exercise by the Federal Maritime Commission of its own expertise in evaluating the testimony of traffic and transportation people must be respected in this instance" (p. 25). Chief Judge Stephens said in *Capital Transit Co. v. P.U.C.*, 213 F.2d 176 (1954), 93 App. D.C. 194:

"The 'expertise' of a Commission usefully serves it in evaluating the evidence, but that expertise cannot supply evidence and cannot, without findings made upon the critical issues before it, guide a commission to a rational and lawful decision" (p. 187)

Without a word of shipper testimony to support its conclusion,

the Commission flatly found that TMT cannot compete with Sea-Land at equal rates. It rejected the offer of evidence, consisting of letters from shippers (Ex. 18, JA 176-199) that would have clearly established the contrary (Petitioner's opening brief pp. 12, 13).¹

TMT asserts (pp. 26, 27) that in the "preservation of TMT" the Commission has followed a course well marked by its sister agency, the Interstate Commerce Commission, referring to the latter's decisions in *Chesapeake & O.R. Co. v. U.S.*, 283 U.S. 35 (1931) and *Santa Fe Trail Stages, Com. Car. Application*, 21 M.C.C. 725 (1940). These decisions have no relevance. They are under the "public convenience and necessity" sections of the Interstate Commerce Act, which have no counterparts in the Shipping Acts. In public convenience and necessity proceedings carrier competition is obviously a primary consideration.

This is not to say that the preservation of competition in the domestic off-shore trades is not a desirable end. But there is no basis whatever in the record before the Commission for a finding that parity rates, Sea-Land with TMT, would result in a Sea-Land monopoly. Another self-propelled containership carrier, SACAL, operates between Jacksonville, Miami and Puerto Rico (See Rep. p. 10, footnote 13), so that even if, as the Commission professes to fear, equal rate competition would spell the end of TMT, the competition of SACAL would continue.

¹ Although TMT asserts that these letters should have been rejected on the ground that they violate the hearsay rule, as this Court noted in *National Council etc. v. Subversive Activities Control Bd.*, 116 App. D.C. 162, 322 F.2d 375 (1963), in administrative agency hearings, the hearsay rule may be more relaxed. The letters were rejected not on the "hearsay" ground, however, but because they "would not change the above findings" (that TMT needs a differential) Rep. p. 7. (JA 55) It is the grounds upon which an agency acts that must be those upon which its action can be sustained. *Securities Comm. v. Chenery Corp.*, 318 U.S. 80, 95.

We submit that by putting Sea-Land in a competitive strait jacket, under the guise of preserving competition in the Florida-Puerto Rico trade, the Commission has not only misinterpreted and misapplied the evidence, but it has ignored the statutory mandates calling for the encouragement and development of a strong, efficient and viable United States Merchant Marine. [See Preamble, Shipping Act 1916 (46 U.S.C. 801) and Declaration of Policy, Merchant Marine Act, 1936 (46 U.S.C. 1101).] (Petitioner's Opening Brief, pp. 21-22) The artificial protection of an inefficient service can in no sense be consistent with these mandates.

The United States takes no position on whether the Commission's conclusions in its report below are proper and supported by the record. The Maritime Commission contends that they are. It asserts that TMT was properly found to provide an inferior service vis a vis Sea-Land; that without an enforced differential, or insulation from equal rate competition, it would go out of business. From there it argues that the Commission has the power to decide, as it has decided, that the public interest is best served by keeping TMT in operation through forbidding Sea-Land to meet its rates.

We have shown that the Commission's definition of "competitive necessity" i.e. the need to reduce rates in order to stay in business, is erroneous. Surely, merely because Sea-Land's overall operation is profitable it may not be precluded from seeking to share in items of traffic that are now largely monopolized by TMT. There is nothing in the statutes that accords the FMC the right to act as a giant "handicapper"; to arbitrarily allocate traffic among the carriers.

The regulatory agencies and the courts have uniformly recognized the right of carriers to meet competition, so long as their rates are within the "zone of reasonableness". *U.S. v. Chi., M. & St. P. & P. Ry*, 294 U.S. 499. This means that ordinarily a carrier may

public any rate on a particular commodity that exceeds its out-of-pocket costs of handling that commodity in order to participate in its movement. We know of no decisions holding that just because a carrier is moving some items of traffic it is foreclosed from seeking to participate in the movement of other items. That is, the decisions recognizing the right of carriers to meet "competition" obviously mean competition as to all traffic that is available for movement.

The Commission finding that Sea-Land may not equalize the TMT rates is not supported by substantial evidence, not based on adequate subsidiary findings, and is erroneous as a matter of law.

III

The Arguments of the Commission and TMT Respecting the Section 16, First, Findings of the Commission Are Invalid

The Commission finds below that the assessing of lower rates by TMT from Florida ports to Puerto Rico than are applied by the carriers serving the North Atlantic ports *could* constitute a violation by TMT of Section 16, First — but that for the reasons stated no violation is shown on this record. (JA 57-59) Surprisingly, TMT devotes more than one-third of its brief to the contention that as a matter of law it *could not have been* found guilty in any case. Thus TMT is not only setting up a "straw man," and arguing a moot point of law, but despite its role as intervenor in support of respondents, it is here attacking a portion of the Commission's report. Moreover, while previously contending that the Commission's action below is not subject to judicial review, it now apparently proceeds on a contrary assumption.

At all events, the decisions cited by TMT in support of its position are inapposite. Since the later decisions in *New York v. U.S.*,

331 U.S. 284 (1947) and *Ayrshire Collieries Corp. v. U.S.*, 335 U.S. 573, (1949), it has been well established that a carrier can be found guilty of undue preference and prejudice even if it does not serve both the preferred and prejudiced points, ports, etc. if the finding is accompanied by a finding of unreasonableness. In the proceeding below, the Commission should have found that the TMT rates, substantially lower than rates of its competitors to the North, are unreasonably low to that extent. Grounded on such a finding, there would be no question of the validity of a finding of unlawfulness under Section 16, First.

That such findings should have been made based on the record below is clear. The Commission found that TMT's low rates attract cargo overland from areas which "could be served by other ports" (JA 59). In fact, the Commission also found that TMT is attracting traffic "upon which the inland rail rate is favorable to North Atlantic ports" (JA 55, 56). It found that approximately 20% of TMT's major commodities in 1964 originated at origins rate favorable to the North Atlantic ports (JA 48). However, the Commission refused to find that TMT is guilty of violating Section 16, First, of the 1916 Act by drawing away traffic tributary to other ports and thus creating undue or unreasonable preference and prejudice. The Commission stated that "naturally tributary" is an economic concept depending upon "the shipper's cost, the value of a carrier's service to a shipper or other factors" (JA 59).

Section 8 of the Merchant Marine Act, 1920 (46 USC 867) states that

"it shall be the duty of the Board [now the Commission] in cooperation with the Secretary of War, with the object of promoting, encouraging and developing ports and transportation facilities in connection with water commerce over which it has jurisdiction, to investigate territorial regions and zones tributary to such

ports, taking into consideration the *economies of transportation by rail, water and highway and the natural direction of the flow of commerce* * * * and to investigate any other matter that may tend to promote and encourage the use by vessels of ports adequate to care for the freight *which would naturally pass through the ports* * * *". (Emphasis added).

This constitutes a directive to the Commission that the determination of what traffic is naturally tributary to a given port must be based upon the economies of transportation by inland carrier, as well as the natural direction of the flow of commerce. In finding that TMT is not guilty of a violation of Section 16, First, the Commission is ignoring the above statutory provisions and is seeking to substitute therefor other irrelevant considerations such as shipper's cost, value of a carrier's service to a shipper, etc. The Commission's report does not state in what manner, if any, these considerations bear on the issues here, or would indicate that TMT is not in fact attracting through Jacksonville traffic naturally tributary to other ports. In previous decisions, the Commission (or its predecessors) has defined "naturally tributary" in terms of geographical distance or lowest inland transportation cost. *Sea-Land Service, Inc. v. South Atlantic & Caribbean Line, Inc.*, 9 F.M.C. 338, 344.

This court, in *Pacific Far East Line v. U.S.*, 101 App. D.C. 24, 246 F.2d 711 (1957), affirmed a Board decision in *City of Portland v. Westbound Conference*, 4 FMB 664 (1955). In that decision, the Board held that:

"Prejudice to localities, within the meaning of Section 16, and discrimination against ports, within the meaning of Sections 15 and 17, if existing, result from * * * the drawing away of traffic inherently and geographically belonging to * * * the Northwest ports" 4 FMB 674.

The Commission in its report below, while refusing to allow

Sea-Land to maintain lower rates from Jacksonville than from North Atlantic ports necessary to meet TMT (and South Atlantic Caribbean Lines) competition, is allowing TMT to do this very thing. This dual standard of regulation is arbitrary, capricious, not supported by adequate subordinate findings, and contrary to the law.

If, as the Commission states, there is a "paucity of the record," and "meager showing" (JA 59) on the question of whether TMT is violating Section 16, First, of the Shipping Act, 1916, it had the duty either to enjoin the *prima facie* violation or hold a hearing for the further taking of evidence, as proposed by dissenting Commissioner Hearn. Certainly, the fact that an order requiring TMT to refrain thereafter from wrongfully drawing traffic away from the ports north of Jacksonville could, in the words of the Report, have a "disastrous impact on TMT" (JA 59) even if supported by the evidence is beside the point. No carrier is entitled to operate unlawfully merely because the alternative would be financial harm.

The Commission brief argues that although TMT should be allowed to continue its *prima facie* Section 16, First, violation, Sea-Land should not be allowed to charge lower rates from Jacksonville than from the ports in the north. This, it is stated, is because Sea-Land has not shown that circumstances and conditions at the respective ports are different. The Commission argues that the TMT competition at Jacksonville is not a different circumstance justifying lower rates therefrom. It does not advert to the competition of SACAL.

That competition is one of the factors to be considered in deciding whether there is undue or unreasonable preference and prejudice is well established. *I.C.C. v. Ala. Midland Ry.*, 168 U.S. 144 (1897). The only reason why Sea-Land wants to assess lower rates from Jacksonville than from the northern ports is that lower rates apply from

that port by TMT (and SACAL). This different competitive situation is complete justification under the law for different rate treatment of the respective ports.

Respectfully submitted,

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